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No. 93-

In The

Supreme Court of the United States

October Term, 1993

SESHADRI RAJU, M.D.,

Petitioner,

v.

ROBERT S. RHODES, M.D.,

Respondent.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR WRIT

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QUESTION PRESENTED

Under 28 U.S.C. § 1728 may a federal district court disregard the *Kremer* due process mandate in determining whether to give a prior administrative adjudication preclusive effect?

PARTIES TO THE PROCEEDING BELOW AND/OR RULE 28.1 LIST

The parties to the proceedings below were the petitioner, Seshadri Raju, M.D. and respondent, Robert S. Rhodes, M.D.

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ROBERT S. RHODES, M.D.,

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Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit

PETITION FOR WRIT

INTRODUCTION

The Petitioner, Seshadri Raju, M.D., respectfully prays that a writ of certiorari issue to review the opinion and judgment the United States Court of Appeals for the Fifth Circuit entered in the above-entitled proceeding on November 26, 1993.

OPINIONS BELOW

The opinion of the Court of Appeals for the Fifth Circuit is reported at 7 F.3d 1210 (5th Cir. 1993), and is reprinted in Appendix A, hereto, page App. 1, *infra.*

The decision of the United States District Court for the Southern District of Mississippi (Lee, D.J.) is reported at 809 F. Supp. 1229 (S.D. MS. 1992). It is reprinted in Appendix B, page App. 16, *infra*.

JURISDICTION

This cause was filed as a breach of contract and tortious interference with business and contractual relations action in the Circuit Court of *Hinds County, Mississippi*. The action was amended to add claims under 42 U.S.C. §1983. Respondent removed this action to the District Court for the United States District Court for the Southern District of Mississippi. Respondent's motion for summary judgment was granted.

On Petitioner's appeal, the Fifth Circuit on November 26, 1993, entered a judgment and an opinion affirming the district court's order. No petition for rehearing was sought. The jurisdiction of this court to review the judgment of the Fifth Circuit is invoked under 28 U.S.C. §1254(1).

STATUTORY PROVISION INVOLVED

28 U.S.C. §1738. This statute is fully reproduced in Appendix F, App. 60.

STATEMENT OF THE CASE

The United States District Court for the Southern District of Mississippi granted Respondent's motion for summary judgment and dismissed the Petitioner's complaint. Petitioner (hereinafter "Raju") appealed the dismissal to the United States Court of Appeals for the Fifth Circuit. In an opinion and judgment entered November 26, 1993, the court of appeals affirmed the district court's judgment. The facts opposing summary judgment are thus presumed true.

Respondent (hereinafter "Rhodes") was the chairman and Raju was a professor in the Department of Surgery at the University of Mississippi Medical Center ("UMC"), a teaching hospital and a division of the State of Mississippi. Raju had served as director of the organ transplant program since 1980 and had achieved world wide recognition in the field of heart, lung, heart-lung, liver and renal transplantation. In 1988, during his first year at UMC, Rhodes made several changes in the Department of Surgery operations, one of which was to impose upon the surgeons in the department a "Management Services Agreement" under which Rhodes would provide management services for income derived from the surgeons' private practice of medicine. At first, Raju refused to participate in this arrangement, but under threat of adverse action by Rhodes with regard to his position in the Department of Surgery (including the threat that Rhodes would remove Raju from the position of director of the transplantation program), Raju entered into a separate agreement. This agreement reduced Raju's freedom to manage his own accounts, collection and expenses associated with his private practice and resulted in a

reduction in his income. For a time, after implementation of the agreement he was permitted to pursue his development of the transplant program[1]

Despite this agreement under which Raju could continue his transplant activities, Rhodes later unilaterally violated the terms of the agreement by removing Raju from the position of Director of the Transplant Program in October of 1990. Rhodes used his position as department chair to make numerous other changes which also affected Raju. He established individual organ transplant teams consisting of different groups of surgeons and internists, permitted transplant surgery only if an intensive care unit bed were available prior to surgery and temporarily suspended extra-renal transplants.

Though Raju was made chief of lung transplantation and liver transplantation, the changes from the terms of the agreement with Rhodes severely impacted Raju's ability to earn substantial income from other types of organ transplantation that Rhodes prevented Raju from undertaking pursuant to the reorganization. In fact, it reduced his income some $200,000 per year. Had these measures been taken in good faith and for legitimate business purposes, Raju would surely have never filed suit. However, the actions were taken with malice towards Raju

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[1] These management service agreements were known by the UMC administration but were completely beyond the authority of the UMC. They were neither sanctioned nor regulated. UMC participated in the physician's private practice income up to a set level; above that each physician controlled his/her own income except for these agreements.

and for the sole reason that they would serve to harm him.

Raju filed a suit for damages against Rhodes in state court. The suit claimed a breach of contract and tortious interference with business an contractual relations and breach of the inherent duty of good faith and fair dealing, common law intentional torts in Mississippi jurisprudence. Before trial, Raju amended his complaint to include a claim for damages against Rhodes in his individual capacity under 42 U.S.C. §1983, and the case was removed to federal court.[2] The district court dismissed the complaint, applying the doctrine of issue preclusion under 28 U.S.C. §1738, and ruled that respondent was immune from actions against him in his official capacity. (The District Court's opinion is set forth at Appendix B, App. 24, 31-32).

The district court determined that Raju's grievance which he had pursued under the UMC faculty grievance procedure precluded relitigation of those issues in the legal action. (Appendix B, App. 24). Seeking to correct

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[2] Limited discovery had been completed prior to removal. The discovery taken produced critical evidence that Rhodes' actions had been taken solely for the purpose of harming Raju and were very much intended to ruin his career at UMC. The deposition testimony of a colleague of the parties reported Rhodes as saying that he was going to get rid of Dr. Raju one way or another. The same physician further testified that he believed Rhodes' primary motive to reorganize the transplant program was to get rid of Raju. Though discovery was far from complete, the testimony of several respected colleagues of the parties (at great risk to their own positions) provided exceptional factual support for the common law claims in the pending complaint.

and enjoin the actions of Rhodes which Raju considered to have resulted in a demotion, to have adversely affected patient care and to have subjected Raju to harassment by Rhodes, Raju had invoked the faculty grievance procedure. The procedure ultimately provided for a hearing before several faculty members. The hearing was informal; Raju was not permitted to be present during the testimony of other witnesses; testimony of witnesses was not under oath; Raju had no power to force the production of documents or the appearance of witnesses; there was no cross-examination. After the hearing, the faculty grievance committee found that the grievance lacked merit.

Having exhausting all administrative remedies at the institutional level, Raju requested review by the state's college board which affirmed the decision of the UMC grievance committee. Raju appealed that decision to the state court which, pursuant to its limited powers of review (based only on the grievance committee transcripts), found that Raju's grievance had no merit, that there was substantial evidence to support the Board of Trustee's decision and that all proceedings were in accord with due process.

On summary judgment in the suit for damages, the district court found that the combined administrative hearing and judicial review satisfied minimal due process requirements of the Fourteenth Amendment. (Appendix B, App. 24-25). The court went no further with its analysis than to observe that the administrative hearing provided Raju notice and an opportunity to be heard, to present witnesses and to respond to the testimony of adverse witnesses in writing and in person. *Id.* In support

of its position the district court noted that, in the grievance appeal, the Hinds County Circuit Court had found there to have been no due process violations. However, this finding by the state court was in reference to due process violations in relation to the "demotion" or taking of property and the adequacy of the proceedings as far as notice and opportunity to be heard were concerned. The state court never conducted a *Kremer* analysis to decide if that very proceeding was sufficient for future purposes of preclusion.[3] No inquiry was made into the subjects of full and fair opportunity to litigate or whether the administrative body was acting in a judicial capacity. And, neither of the two courts below engaged in the necessary analysis pursuant to *Kremer,* to determine if Raju was afforded due process sufficient to render the prior adjudication preclusive. Therefore, the sufficiency of the underlying proceeding has never been properly analyzed by any forum in which it was raised.

Raju's appeal to the court of appeals assigned error to the district court's ruling on issue preclusion.[4] The relief on appeal sought reversal and remand to the state court so that Raju could proceed to trial on his common

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[3] The state court was required to inquire only into whether Raju had been afforded notice and an opportunity to be heard at the administrative level. *McGowan v. Mississippi Oil & Gas Board,* 604 So.2d 312, 318 (Miss. 1992).

[4] Though Raju announced in his brief that the district court rulings on his 28 U.S.C. §1983 claims were not presented for review, the court of appeals analyzed and affirmed the rulings on those claims. (Appendix A, App. 13) Raju did not seek a rehearing to correct this oversight since he had not sought review of those claims anyway.

law claims for damages. The court of appeals affirmed the district court. Its analysis of the record could find no different, nor additional, evidence of due process within the administrative and judicial proceedings than had the district court. However, importance was attached to the quantity of transcript pages (600) and number of hearing days (6). (Appendix A, App. 12-13). The absence of the opportunity for cross-examination and compulsory process was excused as without meaning within the academic setting. The court of appeals nevertheless agreed that all process due had been afforded and that Raju's Administrative and judicial reviews precluded his relitigation of those issues. *Id.*

ARGUMENT

REASONS FOR GRANTING THE WRIT

By its decision, the Fifth Circuit has effectively rewritten the due process standard to be applied in a preclusion situation which was first articulated by this Court in *Kremer. Kremer v. Chemical Constr. Corp.*, 456 U.S. 461, 484-85 n. 26, 72 L.Ed.2d 262, 102 S.Ct. 1883 (1982). *Kremer* stated that where an individual is afforded an administrative hearing that is later judicially reviewed, such decision will be entitled to preclusive effect in any subsequent federal forum if the individual was afforded a full and fair opportunity to litigate and the decision was rendered by a body acting in a judicial capacity. *Id.* at 480-85. At least one other circuit has followed *Kremer*'s lead and held that a full and fair opportunity to litigate

(in the form of procedurally sound underlying administrative adjudication) is required in order to satisfy due process in a preclusion situation. *See Scroggins v. State of Kansas,* 802 F.2d 1289, 1291 (10th Cir. 1986). The instant decision of the Fifth Circuit runs contrary to both *Kremer* and the Tenth Circuit's application of the *Kremer* due process requirements.

The circuit court's decision has worked an egregious wrong on Petitioner, Raju, and will continue to adversely affect all others similarly situated in the future. This particular decision will have very far reaching effects, touching all those who appeal from the decisions of administrative bodies which have been subject to subsequent judicial review.

In this instance, the Fifth Circuit determined an administrative proceeding (which it admits to have been procedurally lacking) to have satisfied "due process" so as to be constitutionally sound and, thus, preclude any relitigation of underlying issues pursuant to 28 U.S.C. §1738. (Appendix A, App. 1, 12 and 13 and for the full text of 28 U.S.C. §1738 see Appendix F, App. 60). The avenue to "relief" to which the circuit court has hereby limited Raju is a grievance proceeding, the panel of which was appointed by an interested party (whose interests ran contrary to Raju) and which provided virtually no procedural safeguards.

It is elementary that before any administrative adjudication may be considered preclusive in any subsequent setting, inquiry must be made first, as to whether the prior adjudication afforded the litigant a full and fair opportunity to litigate and secondly, as to whether the

body rendering the decision was acting in a judicial capacity. *University of Tennessee v. Elliott*, 478 U.S. 788, 797, 92 L.Ed.2d 635, 106 S.Ct. 3220 (1986); *Allen v. McCurry*, 449 U.S. 90, 95, 100-101, 66 L.Ed.2d 308, 101 S.Ct. 411 (1980); *Montana v. United States*, 440 U.S. 147, 153, 59 L.Ed.2d 210, 99 S.Ct. 970 (1979); *Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation*, 402 U.S. 313, 328-29, 28 L.Ed.2d 788, 91 S.Ct. 1434 (1971); *United States v. Utah Mining and Construction Co.*, 384 U.S. 394, 16 L.Ed.2d 242, 86 S.Ct. 1545 (1966). These requirements remain constant and do not simply disappear when a case falls under the parameters of 28 U.S.C. §1738, which requires a federal court to give the same preclusive effect to judgments of a state court that other courts of the same state would afford that decision. (*See, e.g., Kremer*, 456 U.S. at 480-81; *Scroggins*, 802 F.2d at 1291).

In examining the sufficiency of the underlying administrative proceeding under the Due Process Clause, the *Kremer* Court stated:

> Certainly, the administrative nature of the fact-finding process is not dispositive [of the question of satisfaction of Due Process]. In *United States v. Utah Construction & Mining Co.*, 384 U.S. 394 (1966), we held that, so long as opposing parties had an adequate opportunity to litigate disputed issues of fact, *res judicata* [or in this case collateral estoppel] is properly applied to decisions of an administrative agency acting in a 'judicial capacity.'

Kremer, 456 U.S. at 484-85 n. 26. The issues of the adequacy of the underlying administrative adjudication in *Kremer* was central to this court's analysis. *Id.* at 480-85.

In *Scroggins*, the Tenth Circuit followed *Kremer's* lead in examining the procedural sufficiency of the underlying adjudication, deeming it, even though coupled with judicial review, procedurally insufficient to satisfy the *Kremer* due process requirements. The Tenth Circuit noted that the administrative proceedings did not follow any particular statutory or other guidelines and that the rules of the evidence were inapplicable. *Scroggins*, 802 F.2d at 1292. The court stated that the underlying procedural deficiencies of the administrative adjudication could not be cured by the limited judicial review afforded the appellant. The scope of review in that case and in this case was the same.[5] In fact, the two cases are, factually, the mirror image of the other.

In summary, the *Scroggins* court stated as follows:

> Thus, on the basis of the record before us, we are concerned that a full and fair opportunity to litigate the merits of appellant's claim for racial discrimination before a tribunal authorized to hear the claim was eluded. Unlike *Kremer v. Chemical Construction Corp.*, 456 U.S. at 461, 102 S.Ct. at 1887, in which the plaintiff was afforded a comprehensive review and hearing before the state commission on civil rights which had conducted its own investigation, we perceive no similarly focused review here. [footnote omitted] Permitting the state's summary

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[5] In both *Scroggins* and the instant situation, judicial review was limited to a determination of whether agency action was arbitrary or capricious. *See Scroggins*, 802 F.2d at 1292 and *Mississippi Real Estate Commission v. White*, 586 So. 2d 805 (Miss. 1990) (circuit court had no authority to reverse agency decision unless arbitrary and capricious).

> review to receive preclusive effect in appellant's federal suit contravenes the import of §1738 which requires a federal court to give the same preclusive effect to a state court judgment a state would afford. [footnote omitted]
>
> The Kansas Supreme Court has recently stated that the propriety of applying res judicata to administrative agency decisions depends on how closely 'what the agency does resembles what trial court does.' *Neunzig v. Seaman Unified School District No. 345*, 722 P.2d at 569. We do not believe, on the basis of the record before us, that the state would clothe this quasi-judicial proceeding with the vestments of a formal adjudication of plaintiff's claim of racial discrimination.
>
> Because the character of judicial review was both narrow and conclusory, we are unwilling to bar appellant's federal suit. . . .

Id. at 1292-93.

While "full and fair opportunity to litigate" has never been defined by this Court with any particularity, the RESTATEMENT OF THE LAW, SECOND, JUDGMENTS (1988) sets forth what would seem to be likely parameters for such notion and defines the meaning of "judicial capacity.".

> [A]dministrative agencies perform various functions including executive or ministerial decision-making, issuing quasi-legislative rules and regulations and deciding specific legal claims and issues. In earlier eras of the evolution of administrative procedure, all these functions were conducted by relatively informal procedures. In modern administrative agencies, however, well defined procedures are often

> established. When an administrative agency is engaged in deciding specific legal claims or issues through a procedure substantially similar to those employed by the courts, the agency is in substance engaged in an adjudication. Decisional processes using procedures whose formality approximates those of court may properly be accorded the conclusiveness that attaches to judicial judgments.

Id. at 268.

It is perfectly logical that an administrative adjudication possessing the qualities of that described in the RESTATEMENT should be allowed preclusive effect. It is not logical, sound nor just to afford preclusive effect to the administrative adjudication afforded Raju. The Fifth Circuit wholly failed to acknowledge or abide by the above stated due process requirements but opined that the underlying proceeding must only comport with "minimum procedural due process," wholly ignoring the issues of "judicial capacity" and/or "full and fair opportunity." (Appendix A, App. 12-13)

Had the Fifth Circuit followed *Kremer*, it would have reversed. The failure to provide Raju the essential procedural safeguards denied him the opportunity to litigate before an administrative tribunal acting in a judicial capacity. The circuit court admitted that Raju had no opportunity for cross-examination nor compulsory process. (Appendix A, App. 12).

The proceedings also failed in numerous other respects. No witnesses were sworn (See Excerpts from Grievance Committee Hearing Transcripts, Appendix C, D, E, App. 53-59), there was no opportunity to conduct discovery; no rules of evidence controlled matters to be

considered; not only was there no cross-examination, but the adverse party could not even be present for the other party's or witnesses' testimony; witnesses were told by the panel that they could answer questions if they wanted to, but did not have to if they were uncomfortable (See Appendix E, App. 59); and finally, and perhaps most importantly, the administrative hearing was subject to no statutory, regulatory or other procedural scheme. It was completely informal as the committee members frequently stressed to the participants. (Appendix C, App. 54-55, Appendix D, App. 55-57, Appendix E, App. 58-59). Those in charge of the proceedings could run it however they saw fit, and those participating were bound by no procedural parameters, not even an oath of honesty.

This proceeding in no way approximated that of a court; its processes afforded no opportunity to "litigate." Raju was not even present during the majority of the proceedings. In the same vein, the committee was not acting in a judicial capacity as its procedures did not approximate the formality of those of a court. It is not Raju's contention that an administrative agency must take on all the trappings of a court, but certainly there should be some degree of protection of a litigant's right to a full and fair opportunity to litigate and there should be some modicum of certainty that the body making the decision is not acting in a completely arbitrary manner.

The effect of the deficiency in the subject proceeding was strikingly illustrated by the fact that numerous physicians who were coworkers of Raju were called to testify before the Grievance committee and none made any negative or disparaging remarks about Dr. Rhodes, their

boss, and the object of Dr. Raju's grievance. None admitted knowledge of any ill will by Rhodes towards Raju. The deposition testimony of these doctors is, however, quite another story. One after another, the same doctors, when under oath and subject to cross-examination, admitted to overhearing disparaging statement after disparaging statement by Rhodes concerning Raju. They related threat after threat issued by Rhodes directed at Raju. They stated that Rhodes' motivation in all of his actions was to "get rid" of Dr. Raju. None of this was elicited during the grievance proceeding.

Finally, it is of interest that the circuit court stated "[t]here remain differences between disputes arising between scholars and those between ordinary people, to which lawyers are summoned, that should be recognized, and which the law should not destroy." (Appendix A, App. 12). This notion that due process standards differ in the hallowed halls of an academic institution from those that exist in the rest of society is simply erroneous. There is absolutely no authority for this proposition either in case law or in the Constitution. The "due process" mandate of *Kremer* applies to any and all administrative adjudications, whether they be amongst scholars or mere "ordinary people."

This Court has made plain the threshold requirements of due process in an administrative adjudication/ issue preclusion setting. They are the same whether 28 U.S.C. §1738 is called into play or not. In either case, in order to meet with the requirements of due process a prior proceeding must have afforded the litigant a full and fair opportunity to litigate, and the decision must have been rendered by a tribunal acting in a judicial

capacity. The Fifth Circuit simply chose to ignore these fundamentals of due process and erroneously determined that only "minimum" procedural due process was necessary.

What the minimum due process was, the Fifth Circuit did not say. However, it is apparent that the process afforded Raju was not sufficient to meet the threshold requirements of due process set forth in *Kremer* and adhered to by the Tenth Circuit in *Scroggins*. The "adminstrative adjudication" here involved is not comparable to other administrative adjudications carried on by bodies that approximate the machinations of a court of law because they are governed by rules, regulations and procedures. In this instance the "adjudication" in no way resembled any such proceeding and to hold that such an *ad hoc* gathering provided adequate process is to make a mockery of our judicial system and would serve to deprive litigants of fundamental rights.

CONCLUSION

As the Fifth Circuit's opinion in the case at hand runs contrary to the tenets of due process as established by this Court, as the Fifth Circuit's opinion as to the requirements of due process in this setting runs contrary to that espoused by the Tenth Circuit and because the error of the instant decision will have grave, unjust, and far-reaching effects on others similarly situated, Petitioner prays that this Court grant certiorari.

Respectfully submitted,

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APPENDIX

APPENDIX A

Seshadri RAJU, Plaintiff-Appellant,

v.

Robert S. RHODES, M.D.,
Defendant-Appellee.

No. 92-7815.

United States Court of Appeals,
Fifth Circuit.

Nov. 26, 1993.

Professor of surgery at university medical center brought action in state court against chairman of surgery department for breach of contract, tortious interference with business and contractual relations, and for constitutional violations under § 1983. Defendant removed case. The United States District Court for the Southern District of Mississippi, Tom S. Lee, J., 809 F.Supp. 1229, granted summary judgment to defendant, and plaintiff appealed. The Court of Appeals, Sneed, Senior Circuit Judge, sitting by designation, held that: (1) under Mississippi law, plaintiff was collaterally estopped from relitigating state law claims which were litigated, determined, and essential to prior administrative and state court decisions; (2) preclusive effect of state court decision foreclosed plaintiff's overcoming defendant's qualified immunity from civil rights claims, and even if that were not so, plaintiff failed to provide sufficient evidence to overcome such qualified immunity; and (3) defendant was protected by

Mississippi's qualified immunity law as to plaintiff's state law tort and contract claims.

Affirmed.

Appeal from the United States District Court for the Southern District of Mississippi.

Before SNEED*, REYNALDO G. GARZA and JOLLY, Circuit Judges.

SNEED, Circuit Judge:

Plaintiff Seshadri Raju, M.D., appeals a district court order granting Defendant Robert Rhodes, M.D., summary judgment on the ground that Raju was collaterally estopped from relitigating his claims in district court. We affirm.[1]

I.

FACTS AND PRIOR PROCEEDINGS

Seshadri Raju, M.D., is a professor of surgery on the faculty of the University of Mississippi School of Medicine at the University of Mississippi Medical Center ("UMC") in Jackson, Mississippi. He has been employed there since 1972 pursuant to a contract with the Board of

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*Senior Circuit Judge of the Ninth Circuit, sitting by designation.

[1] Although the above description of this case appears quite simple, the relevant litigation history is quite complex. It is set forth in summary form in the margin to which references can be made to understand its relevance to the issues before this court. *See infra* note 3.

Trustees of State Institutions of Higher Learning ("Board of Trustees"). Until September 1990. Raju was director of UMC's transplant program. Robert Rhodes, M.D., was Chairman of the UMC Department of Surgery and was Raju's departmental and academic supervisor.

In 1989, Raju and Rhodes entered into a "Management Services Agreement," under which Rhodes provided management services in return for a part of Raju's income from his private practice. Raju terminated this agreement in 1991.

In October 1990, Rhodes reorganized UMC's transplant program. Raju was removed from his position as program director and was assigned Chief of Lung Transplantation and Chief of Liver Transplantation. Apparently displeased with his new positions and other changes implemented by Rhodes, Raju filed a formal grievance complaint on October 9, 1990, and sought to enjoin Rhodes's actions. Raju's grievance alleged that Rhodes's reorganization of the transplant program resulted in his demotion, adversely affected patient care, subjected him to harassment by Rhodes, interfered with his private practice, and resulted in a breach of the Management Services Agreement. A faculty grievance committee heard Raju's complaint on six separate dates, receiving evidence from people involved in the transplant program and allowing parties to present witnesses, documents, and testimony. The committee unanimously concluded that Raju's grievance lacked merit.

Having exhausted all administrative remedies at the institutional level, Raju requested a review by the Board of Trustees. On October 17, 1991, the Board affirmed the

grievance committee's finding that Raju's claims against Rhodes lacked merit.

Pursuant to Miss.Code. Ann. § 11-51-95, Raju appealed to the Circuit Court of the First Judicial District of Hinds County, Mississippi. The circuit court, affirming that decision, found that substantial evidence supported the Board's decision and that all proceedings complied with due process.

However, before the circuit court reached its decision, Raju brought a separate state court action on December 18, 1990, against Rhodes in the Circuit Court of the First Judicial District of Hinds County, Mississippi (No. 90-66-371). Initially, he alleged breach of contract, breach of the duty of good faith and fair dealing, and tortious interference with business and contractual relations.[2] After Raju amended his complaint to assert constitutional violations under 42 U.S.C. § 1983, Rhodes removed the action to the United States District Court for the Southern District of Mississippi, Jackson Division, pursuant to 28 U.S.C. §§ 1441 and 1443. On November 20, 1992, the district court granted Rhodes's motion for summary judgment, holding that the grievance committee decision and circuit court affirmance collaterally estopped Raju from relitigating his claims, that Raju suffered no procedural nor substantive due process violation, and that Rhodes was immune from suit under Mississippi law.

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[2] These claims were based upon the Management Services Agreement between Raju and Rhodes.

II.

JURISDICTION AND STANDARD OF REVIEW

The district court had jurisdiction pursuant to 28 U.S.C. §§ 1441 and 1443. This court has jurisdiction pursuant to 28 U.S.C. § 1291.

Our review of the district court's grant of summary judgment is *de novo. Fireman's Fund Ins. Co. v. Murchison,* 937 F.2d 204, 207 (5th Cir.1991). This court must ask whether there exist no questions of material fact such that the moving party is entitled to judgment as a matter of law. *Schuster v. Martin,* 861 F.2d 1369, 1371 (5th Cir.1988). We must draw all inferences in the light most favorable to the party opposing the motion. *Reid v. State Farm Mut. Auto. Ins. Co.,* 784 F.2d 577, 578 (5th Cir. 1986). Nevertheless, some deference is due to the district court's interpretation of the law in the state in which it sits. Thus, we must accord the district court some deference on its rulings on Mississippi law. *See Schuster,* 861 F.2d at 1371.

III.

DISCUSSION

This controversy began when Rhodes reorganized the UMC transplant program, removing Raju from his position as program director and assigning him to two new positions. The antecedents of this case are long and complicated and require being set forth in some detail in

the margin.[3] As the chronology reveals, this dispute initially was determined by the authorities of the

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[3] A. *The Administrative Proceedings and Review Thereof*

The proceedings began when Raju filed his grievance complaint on October 9, 1990. The grievance committee met on February 5, 1991, March 5, 1991, April 16, 1991, May 21, 1991, June 4, 1991, and June 19, 1991, and unanimously held that Raju's complaint lacked merit. The committee concluded that: (1) Raju was not demoted by Rhodes; (2) Raju was not harassed by nor discriminated against by Rhodes; and (3) Rhodes's actions were within the scope of his authority, responsibility, and prerogatives as chairman of the surgery department. Further, the committee found that the reorganization of the transplant program was for valid administrative, financial and operational reasons, and that allegations that Rhodes was guilty of professional or ethical misconduct were meritless.

Raju requested review by the Board of Trustees, which affirmed the grievance committee decision on October 17, 1991. The Board determined that: (1) the UMC due process procedures were followed, and (2) the UMC grievance committee's decision was neither arbitrary nor capricious. On November 21, 1991, Raju filed his petition for certiorari appealing the Board's decision to the Circuit Court of the First Judicial District of Hinds County, Mississippi, pursuant to Miss.Code Ann. § 11-51-95. This action was *Raju v. Board of Trustees of the State Institutions of Higher Learning* (No. 91-69-405). Seeking to overturn the Board's refusal to enjoin the reorganization of the transplant program, Raju claimed: (1) The reorganization resulted in a substantial demotion to Raju; (2) evidence presented to the grievance committee did not support its decision or the Board's decision; (3) the reorganization was Rhodes's effort to bring the practice income of other surgeons in the department under his financial control; (4) the Board's decision will have an adverse impact on the current and future prospects of the UMC; and (5) the Board's decision was tainted by serious violations of due process which occurred during the grievance procedure.

Judge Gibbs in *Raju v. Board of Trustees* (No. 91-69-405) denied the petition, thereby affirming the administrative decisions, on August 31, 1992. Specifically, Judge Gibbs found that no evidence

University of Mississippi. From that disposition, Raju initiated state court proceedings in the Circuit Court of the First Judicial District of Hinds County, Mississippi

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established that the reorganization adversely affected the current or future interest of UMC, that substantial evidence supported the Board's determination that the grievance committee decision was not arbitrary – particularly that Raju was not demoted, that he was not personally harassed by Rhodes, that Rhodes's actions were within the scope of his responsibility and authority as department chairman – and that the Board's decision finding no due process violations during the grievance proceedings was supported by substantial evidence. The court explained that Raju received notice, the opportunity to be heard through testimony and other evidence, and the opportunity to present witnesses and to respond to testimony of adverse witnesses in writing and in person.

B. *Raju's Suit Based on State Law Claims (Raju v. Rhodes, No. 90-66-371)*

Before Judge Gibbs in *Raju v. Board of Trustees* (No. 91-69-405) reached his decision on August 31, 1992, Raju filed a complaint against Rhodes in the Circuit Court of the First Judicial District of Hinds County, Mississippi, on December 18, 1990 (*Raju v. Rhodes*, No. 90-66-371). This complaint alleged breach of contract, breach of the duty of good faith and fair dealing, and tortious interference with business and contractual relations. Raju sought damages in the amount of $5 million. On January 29, 1991, Rhodes moved for early determination of his immunity, for protective order, and for dismissal. This motion was based on the privilege of qualified immunity under Mississippi law. On April 5, 1991, the court denied the motion and allowed discovery to proceed only on the issue of qualified immunity.

On April 8, 1991, Rhodes filed his answer and defenses to Raju's complaint in this state law proceeding, *Raju v. Rhodes* (No. 90-66-371), and moved for certification of interlocutory appeal. After the circuit court denied certification, Rhodes on April 24, 1991, petitioned the Mississippi Supreme Court for certification of an interlocutory appeal of the denial of his motion to dismiss and also made a direct appeal. On October 9, 1991, the Mississippi Supreme Court denied Rhodes's petition for interlocutory appeal and

(*Raju v. Rhodes*, No. 90-66-371), on December 18, 1990, in which he sought restoration of his former position and

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dismissed his direct appeal.

On January 16, 1992, Rhodes moved for leave to amend his answer and defenses to include collateral estoppel. On January 31, 1992, the circuit court granted Raju's motion to amend his complaint. Raju then filed his amended complaint on March 30, 1992, in which he relied on constitutional claims for damages under 42 U.S.C. § 1983. He asserted that Rhodes violated his due process rights under the Fifth and Fourteenth Amendments in that Rhodes's reorganization of the transplant program deprived him of his property – income allegedly lost because of Rhodes's interference with Raju's position and standing at UMC and imposition of the Management Services Agreement upon Raju – his liberty interests in the management of his career, practice, and income, and both procedural and substantive due process. Raju also alleged a substantive due process violation on the ground that he was entitled to funds that were diverted to Rhodes and others at UMC through the imposition of the Management Services Agreement.

C. *Raju's Federal Case After Removal By Rhodes (Raju v. Rhodes, No. J92-0206(L)(N))*

Rhodes removed the case to the United States District Court for the Southern District of Mississippi, Jackson Division, on April 10, 1992, because Raju had amended his complaint in the Circuit Court of the First Judicial District of Hinds County, Mississippi (*Raju v. Rhodes*, No. 90-66-371) to assert that his constitutional rights were violated. Rhodes also moved for determination of immunity, dismissal with prejudice, and stay of discovery. Raju filed his second amended complaint on July 14, 1992, to include additional facts affecting Raju's 42 U.S.C. § 1983 action. On September 21, 1992, Rhodes filed a supplement to his motion for determination of immunity, dismissal with prejudice, and stay of discovery. Attached to this was the circuit court opinion of Judge Gibbs (No. 91-69-405, *Raju v. Board of Trustees*), filed on August 31, 1992, in which the circuit court affirmed the prior administrative decisions.

On November 20, 1992, the district court granted Rhodes's motion for summary judgment in *Raju v. Rhodes*, 809 F.Supp. 1229 (S.D.Miss. 1992). The court held that Mississippi's combined

damages. He alleged state law tort and contract claims. Those proceedings began as indicated by note three, and in due course were removed to the United States District Court for the Southern District of Mississippi, Jackson Division, on April 10, 1992, No. J92-0206(L)(N), following an amendment to the complaint adding alleged violations of Raju's federal civil rights. That action was disposed of adversely to Raju on November 20, 1992, and is here being reviewed. The issue before us is whether the district court erred in granting summary judgment to Rhodes on the ground that Raju was collaterally estopped from litigating his claims by the preceding separate administrative proceedings and judicial review. We find no error.

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administrative proceedings and judicial review satisfied due process and that collateral estoppel barred relitigation of issues decided by the grievance committee and affirmed by the Board of Trustees and Circuit Court of the First Judicial District of Hinds County, Mississippi (*Raju v. Board of Trustees*, No. 91-69-405, August 31, 1992). The district court also held that the preclusive effect of the circuit court judgment of August 31, 1992, foreclosed Raju's overcoming Rhodes's qualified immunity in order to sustain his 42 U.S.C. § 1983 claims, including alleged deprivation of his property or liberty interest without procedural or substantive due process. The court further noted that even if it had concluded that collateral estoppel did not apply to the state court findings in *Raju v. Board of Trustees* (No. 91-69-405, August 31, 1992), it nevertheless would conclude that Raju failed to overcome Rhodes's qualified immunity. The court found no protected property nor liberty interest of which Raju could have been deprived. Finally, the court concluded that Rhodes is immune from suit as to Raju's state law tort and contract claims. Judgment became final on November 30, 1992. On December 23, 1992, Rhodes filed his notice of appeal.

A.

The district court's November 20, 1992, summary judgment granted Rhodes judgment in Raju's action asserting constitutional violations under 42 U.S.C. § 1983 *and* state law claims of breach of contract, breach of the duty of good faith and fair dealing, and interference with contractual and business relations. Raju is appealing the adverse judgment with respect to both his state law and constitutional claims.

The Full Faith and Credit Act, 28 U.S.C. § 1738, requires federal courts to give the same preclusive effect to state court judgments that those judgments would receive in the courts of the state from which the judgments emerged. *See, e.g., Allen v. McCurry,* 449 U.S. 90, 96, 101 S.Ct. 411, 415, 66 L.Ed.2d 308 (1980). Under the doctrine of collateral estoppel, once a court of competent jurisdiction decides an issue of fact or law necessary to its judgment, the same parties to that judgment cannot relitigate that issue in a different action. *Montana v. United States,* 440 U.S. 147, 153, 99 S.Ct. 970, 973, 59 L.Ed.2d 210 (1979). Collateral estoppel conserves judicial resources, protects parties from multiple lawsuits, and promotes confidence in judgments and comity between state and federal courts. *See Allen,* 449 U.S. at 94-96, 101 S.Ct. at 414-16.

Mississippi recognizes the doctrine of collateral estoppel. *See, e.g., Dunaway v. W.H. Hopper & Assocs.,* 422 So.2d 749, 751 (Miss.1982); *Magee v. Griffin,* 345 So.2d 1027, 1032 (Miss.1977). Under proper circumstances, it can preclude relitigation of issues determined in administrative proceedings. *See Mississippi Employment Sec.*

Comm'n v. Philadelphia Mun. Separate Sch. Dist., 437 So.2d 388, 396 (Miss.1983); *City of Jackson v. Holliday*, 246 Miss. 412, 149 So.2d 525, 527 (1963).

Mississippi's law of collateral estoppel requires that four elements be satisfied: (1) A party must be seeking to relitigate a specific issue; (2) that issue already had been litigated in a prior lawsuit; (3) that issue actually was determined in the prior lawsuit; and (4) that determination of the issue was essential to the judgment in the prior lawsuit. *Dunaway*, 422 So.2d at 751. Mississippi courts consistently have followed this test. *See, e.g., Estate of Stutts v. Stutts*, 529 So.2d 177, 179 (Miss.1988).

B.

The application of this four-part test dictates that Raju properly was barred from relitigating his state law claims. The issues raised in his complaint were litigated, determined, and essential to the administrative and circuit court decisions. First, in June 1991, the grievance committee determined that Raju's complaint lacked merit. The Board of Trustees affirmed that decision on October 17, 1991. The Circuit Court of the First Judicial District of Hinds County, Mississippi, affirmed all administrative proceedings on August 31, 1992, in *Raju v. Board of Trustees* (No. 91-69-405). The United States District Court for the Southern District of Mississippi, Jackson Division, held on November 20, 1992, in *Raju v. Rhodes*, 809 F.Supp. 1229, that the administrative proceedings had been subjected to constitutionally appropriate judicial review and were entitled to preclusive effect.

C.

We also agree with the district court that the combined administrative hearing and judicial review proceedings satisfy the minimum procedural requirements of due process. *See Kremer v. Chemical Constr. Corp.*, 456 U.S. 461, 481-85, 102 S.Ct. 1883, 1897-99, 72 L.Ed.2d 262 (1982). Therefore, we will not remand this case to the district court for further proceedings. Administrative hearings were held on six separate days; the committee heard about 600 pages of transcribed testimony and reviewed voluminous documents offered by both parties. Each party had ample opportunity to present both written and oral testimony, and the committee could call its own witnesses. True, some of the safeguards employed in court, such as cross-examination and access to compulsory process, were absent, but we have not reached the point at which every dispute within the academic community must be removed either to the court house or to an on-campus equivalent. There remain differences between disputes arising between scholars and those between ordinary people, to which lawyers are summoned, that should be recognized, and which the law should not destroy. The administrative proceedings in this instance not only satisfied the mores of the academic community but also amply satisfied the minimum procedural due process requirements which permit invocation of collateral estoppel.

Raju's efforts to show an impairment of his constitutional rights have been considered by the district court at great length, and we agree with its decision. Raju has suffered no violations of his substantive nor procedural

due process rights. He has been accorded incredibly complete administrative and judicial review and at all levels has failed.

D.

The district court also correctly held that the preclusive effect of the decision of the Circuit Court of the First Judicial District of Hinds County, Mississippi, on August 31, 1992 (*Raju v. Board of Trustees*, No. 91-69-405), foreclosed Raju's overcoming Rhodes's qualified immunity in order to sustain his 42 U.S.C. § 1983 action. Qualified immunity shields government officials performing discretionary functions from civil damages liability if their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S.Ct. 2727, 2738, 73 L.Ed.2d 396 (1982). "[B]are allegations of malice should not suffice to subject government officials either to the costs of trial or to the burdens of broad-reaching discovery." *Id.* at 817-18, 102 S.Ct. at 2738. The court properly found that Raju did not have a constitutionally protected property nor liberty interest of which he could have been deprived by Rhodes's actions. Therefore, Raju could show neither a procedural nor substantive due process violation and consequently could not sustain his 42 U.S.C. § 1983 action.

E.

The district court further explained that even if it had concluded that collateral estoppel did not bar Raju from challenging Rhodes's immunity from suit with respect to

his 42 U.S.C. § 1983 action, it nevertheless would conclude that Raju failed to provide sufficient evidence to overcome Rhodes's qualified immunity. We agree. The facts of the case dictate a finding that Raju has no constitutionally protected property nor liberty interest of which he could have been deprived. Thus, Raju failed to sustain his burden of establishing that Rhodes forfeited his immunity as to Raju's asserted constitutional claims.

Moreover, we agree with the district court that Rhodes was protected by Mississippi's qualified immunity law as to Raju's state law tort and contract claims. *See Womble v. Singing River Hosp.*, 619 So.2d 1252, 1262-65 (Miss.1993); *Hudson v. Rausa*, 462 So.2d 689, 695-96 (Miss.1984).[4] These claims were directly related to Rhodes's actions taken in his public official capacity as chairman of UMC's surgery department; they were discretionary, involved public policy, and were within the scope of his public official duties. Rhodes did nothing to forfeit his qualified immunity. *See Grantham v. Mississippi Dep't of Corrections*, 522 So.2d 219, 225 (Miss.1988) (public officials lose their qualified immunity when they exceed the scope of their authority, commit an intentional tort, or commit a tort outside the scope of their public office).

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[4] In *Womble*, the Mississippi Supreme Court overruled *Hudson* to the extent that it had extended to medical personnel in public service qualified immunity for making individual medical treatment decisions. 618 So.2d at 1262-65. *Womble* maintained qualified immunity to protect public medical officials from liability stemming from their discretionary policy-making decisions. *Id.* at 1265.

F.

Finally, in this appeal, Raju has sought to preclude the above district court actions by suggesting that the state court's denial of Rhodes's motion for determination of immunity, protective order, and dismissal in *Raju v. Rhodes* (No. 90-66-371) constitutes a holding on the merits in favor of Raju.[5] This is reading far too much into that action. Viewed in light of later developments in that proceeding, it is clear that the denial of the motion was intended merely to forestall a premature resolution of the dispute.[6] Therefore, we agree with the district court's grant of summary judgment to Rhodes on the ground that Raju was collaterally estopped from relitigating his claims in federal court.

AFFIRMED.

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[5] *See supra* note 3.B.

[6] The county circuit court (*Raju v. Rhodes*, No. 90-66-371) in denying Rhodes's motion never decided the collateral estoppel issue because Rhodes's motion did not present that defense to the court for a decision on the merits. Moreover, when the court summarily denied the motion, the grievance committee decision was unreviewed. This case was removed to district court on April 10, 1992; the administrative proceedings were affirmed by the county circuit court on August 31, 1992, in *Raju v. Board of Trustees*, No. 91-69-405. Therefore, even assuming that the court denied the motion because collateral estoppel did not apply, this decision was limited to the proceedings that were completed at that time.

APPENDIX B

EXHIBIT R.E. 10

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

SESHADRI RAJU, M.D.

PLAINTIFF

VERSUS CIVIL ACTION NO. J92-0206(L)(N)
(Filed NOV 20 1992)

ROBERT S. RHODES, M.D.

DEFENDANT

MEMORANDUM OPINION AND ORDER

This cause is before the court on the motion of defendant Robert S. Rhodes, M.D., to dismiss plaintiff's complaint for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Alternatively, defendant has moved for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure.[1] Plaintiff Seshadri Raju, M.D., has responded to the motion and the court has considered the memoranda of authorities together with attachments submitted by the parties in ruling on the motion. The court concludes that defendant's motion is well taken and summary judgment should be granted in his favor.

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[1] Both parties have submitted evidence beyond the pleadings and the court has therefore considered defendant's motion as one for summary judgment.

FACTUAL BACKGROUND

This case arises out of the reorganization of the Department of Surgery at the University of Mississippi Medical Center (UMC), a teaching hospital and a division of the State of Mississippi. The parties to this dispute are both employees of UMC. Plaintiff Seshadri Raju is a Professor of Surgery and member of the Department of Surgery, where he has been employed since 1972. Defendant Robert S. Rhodes has at all times material to this dispute been the Chairman of the Department of Surgery at UMC and, as such, plaintiff's departmental and academic supervisor.

In 1988, during his first year at UMC, defendant made several administrative changes in the Department of Surgery operations, one of which was to propose to surgeons in the department a "Management Services Agreement" under which defendant agreed to provide management services for income derived from participating staff members' outside practice of medicine.[2]

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[2] In addition to their teaching duties, physicians serving on the faculty at UMC are permitted to engage in the private practice of medicine. Professors conducting an outside practice, however, must do so pursuant to an income sharing agreement which is the subject of a contractual agreement between the physician faculty member and UMC. This contract requires that any income in excess of $120,000 that a professor makes as a result of outside medical practice be divided between both the physician and UMC, with each party receiving fifty percent. At the time this dispute arose, plaintiff was under such a contract with UMC.

According to Dr. Raju, he reluctantly entered into such an agreement with Dr. Rhodes on June 13, 1989.[3]

Subsequently, in October of 1990, Dr. Rhodes, acting in his capacity as Chairman of the Department of Surgery, made several changes in the operation of the UMC Transplant Program, one of which was the removal of Dr. Raju from the position of Director of the Transplant Program, a position which he had held since 1980. Additionally, as part of the reorganization of the program, Dr. Rhodes established individual organ transplant teams consisting of different groups of surgeons and internists, permitted transplant surgery only if an intensive care unit bed were available prior to surgery, and temporarily suspended extra-renal transplants. Dr. Raju, who was to become Chief of Lung Transplantation and Chief of Liver Transplantation, was displeased with all of these changes, including his removal from the directorship and reassignment to the above positions. He therefore filed a grievance complaint through the proper channels at UMC seeking to enjoin all of Dr. Rhodes' actions. Dr. Raju alleged in his grievance that certain of Dr. Rhodes' decisions and actions concerning the reorganization of the Transplant Program, among other things, resulted in Dr. Raju's demotion, adversely affected patient care, and subjected him to harassment by Dr. Rhodes.

The first step of Dr. Raju's grievance procedure began with Dr. Rhodes, as Chairman of the Department

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[3] According to Dr. Raju, prior to this time he was free to manage his own accounts, collections and expenses associated with his private practice.

of Surgery. Dr. Rhodes, disagreeing with Dr. Raju's perception of the events surrounding the reorganization, concluded that the grievance was without merit. Next, Dr. Raju appealed to Dr. Carl G. Evers, Associate Dean for Academic Affairs. Dr. Evers likewise found no merit in Dr. Raju's allegations. Dr. Raju thereafter appealed to Dr. Norman Nelson, Vice Chancellor for Health Affairs, who appointed a faculty grievance committee to investigate Dr. Raju's allegations. The faculty greivance [sic] committee heard evidence from a number of people involved in the Transplant Program and concluded unanimously that Dr. Raju's grievance against Dr. Rhodes lacked merit. Dr. Nelson concurred in the committee's opinion.

After exhausting all administrative remedies at the institutional level, Dr. Raju requested review by the Board of Trustees of State Institutions of Higher Learning (Board of Trustees), which considered Dr. Raju's grievance and determined that (a) the UMC due process procedures were followed, and (b) UMC's decision was not arbitrary and capricious. The Board of Trustees thus affirmed the grievance committee's finding of no merit in Dr. Raju's claim against Dr. Rhodes.

Aggrieved by the Board of Trustees' decision, Dr. Raju perfected an appeal to the Circuit Court of the First Judicial District of Hinds County, Mississippi, as provided in Miss. Code Ann. § 11-51-95 (1972). Dr. Raju, in seeking to overturn the Board of Trustees' decision not to enjoin UMC's reorganization of its Transplant Program, claimed:

I. The decision will have an adverse impact on the current future prospects for the Medical Center;

II. The decision was arbitrary as the evidence gathered during the grievance procedure clearly does not support the conclusion reached; and

III. The decision was tainted by serious violations of due process which occurred during the grievance procedure.

The circuit court, finding that Dr. Raju's grievance had no merit, that there was substantial evidence to support the Board of Trustees' decision, and that all proceedings were in accord with due process, affirmed the decision of the Board of Trustees.

Prior to the circuit court's denial of his appeal, plaintiff filed a separate state court action against Dr. Rhodes asserting, in regard to the Management Services Agreement between he and Dr. Rhodes, claims for breach of contract and tortious interference with business and contractual relations. Subsequently, yet still prior to the circuit court's decision, plaintiff amended his complaint to include a claim for damages against Dr. Rhodes in his individual capacity under 42 U.S.C. § 1983 for violation of his due process rights under the Fourteenth Amendment. Specifically, as grounds for his § 1983 claim, Dr. Raju alleged that Dr. Rhodes' actions in reorganizing the Transplant Program at UMC deprived him of property interests in his position as Director of the Transplant Program and profits from his private practice, as well as liberty interests in the management of his practice, career and income, all of which were denied him without a

predeprivation hearing. Dr. Raju also alleged a violation of his substantive due process rights, contending that as a result of the alleged "arbitrary, capricious and unreasonable" actions of Dr. Rhodes in reorganizing the Transplant Program, he is no longer a world renowned transplantation surgeon, but rather, "is now relegated to the genre of a garden variety transplant surgeon." Once Dr. Raju's state court complaint was amended to include claims under § 1983, Dr. Rhodes removed the case to this court and now seeks summary judgment as to all claims asserted against him.

As the primary bases for his motion, Dr. Rhodes contends that certain factual issues decided by the UMC faculty grievance committee, and later adopted by the Circuit Court of Hinds County as part of its judgment affirming the Board of Trustees' decision, must be accorded collateral estoppel effect by this court. Consequently, according to Dr. Rhodes, this court is compelled to dismiss him from this action on the ground that, as a public official who did not violate Dr. Raju's clearly established constitutional rights, he is immune from suit as a matter of law with respect to all of plaintiff's state law and § 1983 claims. Dr. Rhodes further argues that, on their merits, none of Dr. Raju's claims meet the heightened standards of pleading and proof required to overcome his qualified immunity. *See Elliott v. Perez*, 751 F.2d 1472, 1478 (5th Cir. 1985).

II. LEGAL ANALYSIS

A. Must the judgment of the state court affirming the findings of the Board of Trustees and faculty grievance committee be given preclusive effect in this federal court litigation?

It is undisputed that the Full Faith and Credit Act, 28 U.S.C. § 1738, requires federal courts to give the same preclusive effect to state court judgments that those judgments would be given in the courts of the state from which the judgments emerged. *See, e.g., Allen v. McCurry,* 449 U.S. 90, 96 (1980); *Montana v. United States,* 440 U.S. 147 (1979). Under the doctrine of collateral estoppel, the preclusion doctrine at issue in this case, "once a court decides an issue of fact or law necessary to its judgment, that decision precludes relitigation of the same issue on a different cause of action between the same parties." *Kremer v. Chemical Constr. Corp.,* 456 U.S. 461, 466 n.6 (1982) (citations omitted).[4]

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[4] Although often discussed in terms of res judicata, collateral estoppel, also called "issue preclusion," is a separate preclusion doctrine from res judicata, also called "claim preclusion." Under principles of res judicata, a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action. *Allen,* 449 U.S. at 94. In other words, res judicata prevents relitigation of claims; collateral estoppel ends controversy over issues. Contrary to res judicata, which precludes only subsequent suits on the same cause of action, collateral estoppel precludes relitigation of identical issues in later suits on any cause of action. *See* J. Friedenthal, M. Kane and A. Miller, *Civil Procedure* § 14.2, at 613 (1985).

Whether a judgment is entitled to preclusive effect under § 1738 depends on whether the party against whom the state court judgment was rendered had a full and fair opportunity to litigate the claim at issue. *Allen*, 449 U.S. at 95. In this regard, however, "state proceedings need do no more than satisfy the minimum procedural requirements of the Fourteenth Amendment's Due Process Clause in order to qualify for the full faith and credit guaranteed by federal law." *Kremer*, 456 U.S. at 481. In *Kremer*, the Supreme Court held that the State of New York's combined administrative hearing and judicial review procedures satisfied this test.[5] As stated by the Court: "It is well established that judicial affirmance of an administrative determination is entitled to preclusive

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[5] In *Kremer*, the Court determined that a judgment in a New York state court judicial review proceeding, which rejected an employee's claim of discrimination under the New York Executive Law, barred the employee's subsequent federal court Title VII action. Since Title VII, like § 1983, did not repeal § 1738, the preclusive effect of the New York judgment was determined on the basis of New York's law of preclusion. Kremer sought to avoid preclusion of the Title VII claim on the grounds that the New York courts did not determine his Title VII rights, and the state court procedures were allegedly inadequate. The Court rejected both arguments.

Despite the fact that the state court dealt only with a state law claim, the Title VII claim was barred because the elements of the state and federal claims were virtually identical. The adverse state law ruling not only resolved that Kremer's state law claim was without merit, but also "that a Title VII claim arising from the same events would be equally meritless." *Kremer*, 456 U.S. at 480. Because the New York law of preclusion barred Kremer's Title VII claim, the claim was barred in federal court as well.

effect. . . . There is no requirement that judicial review proceed *de novo* if it is to be preclusive." *Id.* at 480 n.21.[6]

In the case *sub judice,* this court finds, in accordance with *Kremer,* that Mississippi's combined administrative hearing and judicial review proceedings satisfy the minimum procedural requirements of the Fourteenth Amendment Due Process Clause. The record in this cause reveals that UMC followed its grievance procedure, which included providing Dr. Raju notice and an opportunity to be heard through testimony and other evidence. Dr. Raju was also given the opportunity to present witnesses and to respond to the testimony of any adverse witness in writing and in person. The faculty grievance committee reached its unanimous findings only after reviewing and considering the approximately 600 pages of transcribed testimony and numerous documents submitted by the parties. All of this evidence was before both the Board of Trustees and the Hinds County Circuit Court when each considered Dr. Raju's appeal of the committee's findings. Furthermore, it is readily apparent from its written opinion that the state court analyzed each of the committee's findings to determine whether the Board of Trustee's

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[6] Under *Kremer,* state court judicial review determinations commonly are afforded preclusive effect in federal court § 1983 actions; preclusive effect has even been given to state court judicial review determinations rendered under any evidence standard. *See* 1 M. Schwartz and J. Kirklin, *Section 1983 Litigation: Claims, Defenses, and Fees* § 11.4, at 647 (2d ed. 1991) (citing cases); *Sykes v. McDowell,* 786 F.2d 1098, 1103 (11th Cir. 1986) ("The teaching of *Kremer* is that federal courts must accord preclusive effect to issues litigated and decided on the merits, even though the review on the merits is sharply limited.").

affirmance of those findings, as well as the Board's independent finding that there were no violations of due process during the proceedings at UMC, were supported by substantial evidence.[7] In the court's opinion, the proceedings pertaining to Dr. Raju's grievance against Dr. Rhodes were sufficient to "satisfy the minimum procedural requirements of the Fourteenth Amendment's Due Process Clause in order to qualify for the full faith and credit guaranteed by federal law." *Id.* at 481.

The court's next task, in accordance with § 1738, is to determine whether the Mississippi law of collateral estoppel bars Dr. Raju's relitigation in the courts of the State of Mississippi of the issues decided by the faculty grievance committee and affirmed by both the Board of Trustees and the Circuit Court of Hinds County. If so, Dr. Raju will be similarly precluded from litigating those issues in this case.

Under Mississippi law, collateral estoppel operates to bar litigation of an issue where four elements are satisfied: (1) the plaintiff is seeking to relitigate a specific issue; (2) the issue was already litigated in a prior action; (3) the issue was actually determined in the prior action; and (4) the determination of the issue was essential to the judgment in the prior action. *Dunaway v. W. H. Hopper & Assoc., Inc.*, 422 So. 2d 749, 751 (Miss. 1982). *See also Schuster v. Martin*, 861 F.2d 1369, 1371-72 (5th Cir. 1988). In denying Dr. Raju's appeal and finding his grievance

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[7] Although it is not clear from the record as to at what stage in the grievance process Dr. Raju obtained counsel, it is apparent that he had obtained counsel by the time of his appeal to the circuit court.

without merit, the circuit court affirmed the following findings relating to the decision of the Board of Trustees:

(1) All of Dr. Rhodes' actions pertaining to the reorganization of the Transplant Program were in the scope of his authority as Chairman of the Department of Surgery, were not arbitrary and capricious, and were not personal attacks on Dr. Raju;

(2) Dr. Rhodes' actions in reorganizing the Transplant Program were not arbitrary and capricious, but rather were based on legitimate medical, administrative and financial concerns;

(3) Dr. Raju was not demoted and neither his salary nor his duties were decreased as a result of the reorganization;

(4) There were no violations of due process during the proceedings at UMC.

It is apparent from the opinion of the circuit court that each of the above issues was actually litigated and determined in the state proceedings to which both Dr. Raju and Dr. Rhodes were parties.[8] It is also apparent that these findings were the basis for denying Dr. Raju's grievance. Had the state court determined that the findings were not supported by substantial evidence, the Board of Trustees' decision presumably would have been

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[8] Although plaintiff has filed an appeal with the Mississippi Supreme Court seeking to overturn the judgment of the circuit court, under Mississippi law the pendency of an appeal has no effect on the preclusiveness of an administrative or judicial determination. *Smith v. Malouf*, No. 90-CA-0681 (Miss. April 29, 1992).

overturned and Dr. Raju's request for injunctive relief granted. Patently, the resolution of these issues was essential to the judgment of the circuit court. *See Schuster*, 861 F.2d at 1371-73.[9] Dr. Raju is therefore estopped under Mississippi law from relitigating these issues and this court, in the action presently pending, must accept the above findings by the state court in resolving the issues before this court.[10]

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[9] The findings of the faculty grievance committee were affirmed by the circuit court and thus became part of that court's judgment. Consequently, since all four of the elements necessary for collateral estoppel to apply under Mississippi law have been met in the instant case, it is the circuit court's judgment which must be given preclusive effect in this federal litigation. *See Schuster*, 861 F.2d at 1371-73. The court further notes that decisions by state agencies acting in a quasi-judicial capacity are also accorded preclusive effect under both federal and Mississippi law. *See University of Tennessee v. Elliott*, 478 U.S. 788, 799 (1986); *Hood v. Mississippi Dep't. of Wildlife Conservation*, 571 So. 2d 263, 268-69 (Miss. 1990).

[10] Plaintiff argues that because the relief sought in this federal action (monetary damages) is different from that sought in the state proceedings (injunctive relief), collateral estoppel does not apply to the findings of the state court. This argument was rejected by the Fifth Circuit in *Schuster*, 861 F.2d at 1372, and therefore, does not aid the plaintiff in this cause.

Additionally, plaintiff argues that collateral estoppel should not apply since he could not have brought either his state law or § 1983 claims in the state proceedings. This argument is also unpersuasive. Although it is true that Dr. Raju could not appropriately have asserted these "claims" in the state administrative and judicial review proceedings, this court's ruling giving preclusive effect to the findings of the state court is based on the doctrine of collateral estoppel (issue preclusion), not on the doctrine of res judicata (claim preclusion). In other words, specific issues were litigated between these parties in the state

B. Given the preclusive effect of the issues previously determined by the state court, is Dr. Rhodes entitled to qualified immunity as to plaintiff's procedural and substantive due process claims under 42 U.S.C. § 1983?

The court is of the opinion that the preclusive effect of the circuit court judgment forecloses Dr. Raju's overcoming Dr. Rhodes' qualified immunity in order to sustain his § 1983 claim. In a § 1983 action against a public official, the plaintiff bears the burden of alleging and proving that the defendant's conduct violated "clearly established" constitutional law. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). Qualified immunity shields government officials "from civil damages liability so long as their actions could reasonably have been thought consistent with the rights they are alleged to have violated." *Anderson v. Creighton*, 483 U.S. 635 (1987). In *Anderson*, the Supreme Court explained what is meant by "clearly established," using, as is the case here, a claimed violation of the due process clause as an example:

> The operation of this standard . . . depends substantially upon the level of generality at

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proceedings which would have to be both relitigated and decided differently in this action in order for Dr. Raju to prevail on his present claims. As such, the doctrine of collateral estoppel applies to preclude Dr. Raju from relitigating those issues. *See supra* at note 4. Though the "claims" asserted in the two proceedings may be different, the underlying issues required to be litigated in support of the claims asserted in this action are the same issues which were already litigated in regard to the claims asserted by Dr. Raju in the state proceedings. *See Kremer*, 456 U.S. at 479-80.

which the relevant "legal rule" is to be identified. For example, the right to due process of law is quite clearly established by the Due Process Clause, and thus there is a sense in which any action that violates that Clause (no matter how unclear it may be that the particular action is a violation) violates a clearly established right. Much of the same could be said of any other constitutional or statutory violation. But if the test of "clearly established law" were to be applied at this level of generality, it would bear no relationship to the "objective legal reasonableness" that is the touchstone of *Harlow.* Plaintiffs would be able to convert the rule of qualified immunity that our cases plainly establish into a rule of virtually unqualified liability simply by alleging violation of extremely abstract rights. *Harlow* would be transformed from a guarantee of immunity into a rule of pleading. Such an approach, in sum, would destroy the balance that our cases strike between the interests in vindication of citizens' constitutional rights and in public officials' effective performance of their duties," by making it impossible for officials "reasonably [to] anticipate when their conduct may give rise to liability for damages." It should not be surprising, therefore, that our cases establish that the right the official is alleged to have violated must have been "clearly established" in a more particularized, and hence more relevant, sense: *The contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right.* This is not to say that an official action is protected by qualified immunity unless the very action in question has previously been held unlawful, but to say that in the

> light of pre-existing law the unlawfulness must be apparent.

Id. at 639-60. (citations omitted) (emphasis added).

In accordance with the approach articulated by the Supreme Court in *Anderson*, this court, in considering Dr. Rhodes' right to qualified immunity with respect to Dr. Raju's Fourteenth Amendment due process claims, must determine whether Dr. Raju had a constitutionally protected property or liberty interest which was clearly implicated in Dr. Rhodes' actions and whether Dr. Rhodes plainly knew that he was violating any such interests. *See Connelly v. Comptroller of the Currency*, 876 F.2d 1209, 1212 (5th Cir. 1989). In so doing, this court is bound to decide "exactly what constitutional violation might have occurred if the facts are as . . . plaintiff alleged." *Id.* A conclusion by the court that a violation *"arguably"* occurred is not sufficient. *Id.* "Rather, the court must be certain that if the facts alleged by plaintiff are true, notwithstanding any credibility disputes with defendants, . . . then . . . a violation has clearly occurred." *Id.*

To establish a due process claim under the Fourteenth Amendment, Dr. Raju must first demonstrate the deprivation of a constitutionally protected property or liberty interest. *Kinsey v. Salado Indep. School Dist.*, 950 F.2d 988, 997 (5th Cir. 1992); *see also Connelly*, 876 F.2d at 1212 ("Due process analysis requires first a finding of a property of liberty interest and then an assessment of what process must attend a particular deprivation."). As noted previously, Dr. Raju alleged violations of his property interests in the directorship of the UMC Transplant

Program[11] and the income and profits from his outside medical practice.[12] He has also alleged violations of his liberty interests in the management of his practice, career and income. Consequently, in assessing defendant's right to qualified immunity, the court must determine "whether any of these claims rests upon such clearly established law that the defendant[] ha[s] forfeited [his] qualified immunity from suit." *Id.*[13]

Initially, the court finds that because of the collateral estoppel effect of the issues decided by the state court in

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[11] As a result of his removal as Director of the Transplant Program, Dr. Raju contends that he has also been deprived of property rights in two positions which were "integral parts" of his position as Director. One was his position as Organ Procurement Director and the other was his position on the Board of Directors of the United Network for Organ Sharing (UNOS). As "integral parts" of his directorship position, the same legal analysis applies to the alleged violations of those property interests as does the alleged violation of Dr. Raju's property interest in his position as Director.

[12] Specifically, Dr. Raju has alleged that "Rhodes' actions diverted profits actually generated by him by virtue of the practice plan which Rhodes forced Raju to sign under duress," and that "Rhodes' actions have deprived him of future profits that would be generated by his business."

[13] In an attempt to overcome Dr. Rhodes, immunity defense, Dr. Raju, in response to defendant's motion, has presented evidence which he claims shows Dr. Rhodes' alleged bad faith and malice in reorganizing the Transplant Program in order to "do Raju in." Subjective malice or bad faith, however, even if present, is irrelevent to the determination of whether Dr. Rhodes is entitled to qualified immunity. *See Harlow*, 457 U.S. at 817 ("[A]llegations of malice [will not] suffice to subject government officials either to the costs of trial or to the burden of broad reaching discovery.").

rendering its judgment on plaintiff's appeal of the Board of Trustees' decision, Dr. Raju is precluded from challenging Dr. Rhodes' defense of qualified immunity. "To have a property interest in a benefit, a person clearly must have more than an abstract need for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it." *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972). It is undisputed that Dr. Raju has remained on the faculty of the University of Mississippi Medical School as a full professor of surgery and that he has continued to be compensated pursuant to his contract with UMC.[14] It is

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[14] The affidavit of Dr. Norman Nelson, Vice Chancellor for Health Affairs at UMC, states that Dr. Raju's employment contract guaranteed him a salary of $78,880. Dr. Raju does not contend that he has not received this salary, but rather, claims that by virtue of the Management Services Agreement which he entered with Dr. Rhodes, Dr. Rhodes has diverted a significant portion of the profits from his private practice to which he was entitled under his employment contract with UMC. *See supra* at note 2. Dr. Raju concedes, however, that he not only read the contract, but also made certain changes in its provisions prior to signing. Though he alleges that his signing of the contract was under duress in that Dr. Rhodes had threatened to remove him as Director of the Transplant Program if he did not enter the agreement, the court notes that it is not duress to do what one has the legal right to do. As noted above, it had already been preclusively determined that all of Dr. Rhodes' actions concerning the reorganization of the Transplant Program were within his authority as Chairman of the Department, were not arbitrary and capricious, and were for legitimate administrative and financial concerns. Further, as discussed *infra*, the court is of the opinion that Dr. Rhodes' decision to remove Dr. Raju as Director of the Transplant Program did not violate any of Dr. Raju's clearly established constitutional rights. Consequently, Dr. Raju cannot now complain that the agreement *which he entered* has resulted in a deprivation of his property without due process.

further undisputed that the position of Director of the UMC Transplant Program was an uncompensated position and that Dr. Raju received no additional renumeration [sic] for serving as Director. Indeed, the state court preclusively determined that Dr. Raju was not demoted by Dr. Rhodes, and that the reorganization of the Transplant Program neither decreased Dr. Raju's duties nor his salary at UMC.

The Fifth Circuit has held in a number of cases that unless the state "specifically creates a property interest in a noneconomic benefit such as a work assignment, a property interest in employment generally does not create due process property protection for such benefits." *Jett v. Dallas Indep. School Dist.*, 798 F.2d 748, 754 n.3 (5th Cir. 1986) (contract did not "create a property interest in the intangible, noneconomic benefit of [plaintiff's] assignment as coach"). *See also Kinsey v. Salado Indep. School Dist.*, 950 F.2d 988 (5th Cir. 1992) ("[Plaintiff] did not have a constitutionally protected interest in the noneconomic benefit of serving as superintendent. Accordingly, we do not reach his contention that he did not receive due process."); *Davis v. Mann*, 882 F.2d 967, 973 n.16 (5th Cir. 1989) ("employee suffers no compensable damage from an early employment termination where he has been paid his full salary for the contract year; no support . . . for Davis's claim that he is entitled to the duties and responsibilities of this employment as specified under contract"); *Cannon v. Beckville Indep. School Dist.*, 709 F.2d 9, 11 (5th Cir. 1983) (superintendent terminated without hearing did not have due process claim, because he had been paid "the full amount due him under the existing contract"). Application of these precedents to the findings of the state court leads to the conclusion that Dr. Raju had

no "clearly established" property interest in his "position" as Director of the UMC Transplant Program or in any income above that which was guaranteed him under his contract with UMC. *See Kinsey*, 950 F.2d at 997. In fact, in the court's view, he did not even have an "arguable" property interest. *See Connelly*, 876 F.2d at 1212 (to overcome defendant's qualified immunity, property interest must be "clearly established"; existence of "arguable" property interest will not thwart an immunity defense). Accordingly, Dr. Rhodes has qualified immunity as to Dr. Raju's claimed deprivation of property interests without due process.[15]

The court likewise concludes that, because of the preclusive effect to be accorded the determinations supporting the state court judgment, Dr. Raju cannot sustain his § 1983 claim against Dr. Rhodes based on the alleged deprivation of constitutionally protected liberty interests. According to Dr. Raju, two variations of a protected liberty interest are submerged in his complaint. He asserts that Dr. Rhodes' actions not only effectively barred him from pursuing his chosen vocation, *see Phillips v. Vandygriff*, 711 F.2d 1217, 1222 (5th Cir. 1983), but also resulted in a stigmatizing injury to his reputation, *see Connelly*, 876 F.2d at 1214-15. With respect to the first assertion, in view of the state court's findings that all of Dr. Rhodes' actions were in the scope of his authority,

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[15] Only if the court had concluded that Dr. Raju did have a protected property interest would the court then be called upon to determine whether this interest was so "clearly established" such that Dr. Rhodes must have "plainly known" that he was infringing it. *Connelly*, 876 F.2d at 1214.

responsibility and prerogatives as Chairman of the Department of Surgery, were not arbitrary and capricious and were not personal attacks on Dr. Raju, this court cannot conclude that Dr. Rhodes plainly knew that his actions in reorganizing the Transplant Program violated Dr. Raju's right to follow his chosen profession.

Dr. Raju is similarly foreclosed from sustaining his reputational due process claim against Dr. Rhodes. It is well established that " 'reputation alone is not a protected liberty interest. A plaintiff must show a stigma plus an infringement of some other interest.' In addition, . . . the 'plaintiff [must] prove that the stigma was caused by a false communication.' " *Connelly*, 876 F.2d at 1215 (quoting *Vandygriff*, 711 F.2d at 1221). In this regard, the Fifth Circuit held in *Moore v. Otero*, 557 F.2d 435 (1977), that

> [w]hen an employee retains his position even after being defamed by a public official, the only claim of stigma he has derives from the injury to his reputation, an interest that *Paul [v. Davis*, 424 U.S. 693 (1976),] reveals does not rise to the level of a liberty interest. *The internal transfer of an employee, unless it constitutes such a change of status as to be regarded essentially as a loss of employment, does not provide the additional loss of a tangible interest necessary to give rise to a liberty interest meriting protection under the due process clause of the fourteenth amendment. See Sullivan v. Brown*, 544 F.2d 279, 283 (6th Cir. 1976) (transfer of teacher did not deprive her of liberty interest); *Danno v. Peterson*, [421 F. Supp. 950, 954 (N.D. Ill. 1976)] (transfer of teacher did not deprive her of liberty interest). *Cf. Colaizzi v. Walker*, 542 F.2d 969, 973-74 (7th Cir. 1976)

> (stigma plus employment discharge gave rise to liberty interest).

Id. at 438 (emphasis added).

In this case, the circuit court's opinion establishes that Dr. Raju, although removed from the position of Director of the Transplant Program, remains a tenured faculty member of UMC and continues to receive his salary as such. Further, it has been determined by the state court that he was neither demoted nor were his duties or salary decreased as a result of the reorganization of the Transplant Program. Consequently, even assuming that Dr. Raju has been stigmatized, his removal as Director was not "such a change of status to be regarded . . . as a loss of employment" and, therefore, "does not provide the additional loss of a tangible interest necessary to give rise to a liberty interest meriting protection under the due process clause. . . . " *Id. See also Paul,* 424 U.S. at 710 ("Certainly there is no suggestion in *Roth* to indicate that a hearing would be required each time the State in its capacity as employer might be considered responsible for a statement defaming an employee who continues to be an employee."). As Dr. Raju had no "clearly established" liberty interests of which he could have been deprived by Dr. Rhodes' actions, Dr. Rhodes is entitled to qualified immunity as to Dr. Raju's claim based on alleged deprivations of his liberty interests.[16]

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[16] Even if the court were to find that Dr. Raju could support a claim for deprivation of a protected liberty interest, his due process claim would nevertheless fail as he was provided all the process he was due. Once a plaintiff establishes the deprivation of a liberty interest, he is entitled to nothing more than " 'a

In addition to his procedural due process claims, Dr. Raju has alleged that as a result of Dr. Rhodes' actions in implementing changes in the Transplant Program, he has been deprived of substantive due process. To maintain a cause of action for violation of substantive due process, a plaintiff must show (1) the existence of a protected property or liberty interest, and (2) arbitrary or capricious deprivation of that interest. *See Honore*, 833 F.2d at 568. Recognizing this, Dr. Raju states in support of his claim that he had "protected property interests in his position as Director of the Transplant Program and to the income generated by his practice," as well as "protected liberty interests in his reputation . . . and additionally in his right to engage in 'a common occupation of life.' " According to Dr. Raju, "Rhodes has deprived [him] of all of the above through his arbitrary, capricious and unreasonable actions."

Having concluded that Dr. Raju had no constitutionally protected property or liberty interest, it follows that his substantive due process claim must necessarily fail. Moreover, the state court, in its opinion affirming the findings of

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hearing to clear [his] name.' " *Kelleher v. Flawn*, 761 F.2d 1079, 1087 (5th Cir. 1985) (quoting *Wells v. Doland*, 711 F.2d 670, 676 (5th Cir. 1983)). In the instant case, it is uncontroverted that Dr. Raju filed a grievance complaint which, in accordance with UMC procedures, was considered in an administrative proceeding before a faculty grievance committee. As noted previously, that committee's decision in regard to Dr. Raju's complaint was reviwed [sic] by both the Board of Trustees and the Circuit Court of Hinds County. This court is of the opinion that these proceedings provided Dr. Raju with an opportunity "to clear [his] name." *Id.* As such, Dr. Raju has not been deprived of liberty without due process.

the faculty grievance committee and Board of Trustees, concluded that the administrative changes implemented by Dr. Rhodes were not arbitrary and capricious, but rather, were based on legitimate, medical, administrative and financial concerns. The collateral estoppel effect of that state court judgment renders Dr. Raju's substantive due process claim without merit. The court is therefore of the opinion that Dr. Raju cannot establish, in order to overcome Dr. Rhodes' qualified immunity, the violation of a clearly established constitutional right in regard to his substantive due process claim.

C. Aside from the preclusive effect of the issues previously determined by the state court, is Dr. Rhodes entitled to qualified immunity as to plaintiff's claims under 42 U.S.C. § 1983?

Although the court is of the opinion that the doctrine of collateral estoppel precludes Dr. Raju from challenging Dr. Rhodes' immunity from suit with respect to the § 1983 claims asserted against him, even were the court to conclude that the doctrine of collateral estoppel does not apply to the state court's findings, the court would nevertheless conclude that the proof submitted by Dr. Raju is not sufficient to overcome defendant's qualified immunity.[17]

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[17] The court notes at the outset that although it is not to give "slavish deference to a university's arbitrary deprivation of a vested . . . right," *Honore*, 833 F.2d at 569, federal courts have consistently refrained from interfering in the sort of interfaculty dispute that gives rise to the action presently pending:

> In public schools and universities across this nation, interfaculty disputes arise daily over teaching assignments, room assignments, administrative duties,

1. Has plaintiff been deprived of a constitutionally protected property interest?

The court is convinced that the undisputed facts of this case dictate a finding that Dr. Raju had no constitutionally protected property interest in the directorship of the UMC Transplant Program. "Property interests in continued employment 'are created and their dimensions defined by existing rules or understandings that stem from an independent source such as state law.' " *Sodestrom v. Town of Grand Isle*, 925 F.2d 135, 138 (quoting *Roth*, 408 U.S. at 577). In other words, a plaintiff must show an enforceable contractual right, whether explicit or implicit, establishing a legitimate claim of entitlement to continued employment under state law. *See Perry v. Sindermann*, 408 U.S. 593, 602 (1972). In support of his claim that he held a protected property interest in the directorship position, Dr. Raju has submitted an affidavit in which he states:

> classroom equipment, teacher recognition and a host of other relatively trivial matters. A federal court is simply not the appropriate forum in which to seek redress for such harms. (citations omitted).
> We have neither the competency nor the resources to micromanage the administration of thousands of state educational institutions. (citations omitted). Of all fields that federal courts " 'should hesitate to invade and take over, education and faculty appointments at [the university] level are probably the least suited for federal court supervision.' " *Smith v. University of North Carolina*, 632 F.2d 316, 345 n. 26 (2d Cir. 1980) – (quoting *Faro v. New York University*, 502 F.2d 1229, 1331-32 (2d Cir. 1974).

Dorsett v. Board of Trustees of State Colleges and Universities, 940 F.2d 121, 123-124 (5th Cir. 1991).

> In 1980, when I was appointed Director of the Transplant Program at the University of Mississippi Medical Center (UMC) by Dr. James D. Hardy, then Chairman of the Department of Surgery, this was approved by Dr. Norman Nelson, it was implicit in our understanding that my appointment was a permanent one, only to be disturbed when I voluntarily quit or should be terminated for cause. This has been the practice with regard to other persons in similar positions at the University of Mississippi Medical Center, past and present.

Even assuming the truth of Dr. Raju's assertion, this court is nevertheless bound to conclude that this fact would not establish that Dr. Raju had a protected property interest in his position as Director of the Transplant Program. The court "reiterate[s] the language of Roth that understandings and customs must 'stem from . . . state law.' [O]nly if consistent with official law may such practices create a property interest. . . . " *Batterton v. Texas Gen. Land Office*, 783 F.2d 1220, 1223-24 (5th Cir.) (citation and footnote omitted), *cert. denied*, 479 U.S. 914 (1986). In this regard, Mississippi law makes clear that an agreement for "permanent" employment is terminable at the will of either party for "good reason, a wrong reason, or no reason. . . . " *Kelly v. Mississippi Valley Gas Co.*, 397 So. 2d 874, 875 (Miss. 1981). *See also Rape v. Mobile & O. R. Co.*, 136 Miss. 38, 100 So. 585 (1924). Furthermore, an oral employment agreement not to be performed within fifteen months is unenforceable under Mississippi law as violative of the statute of frauds. Miss. Code Ann. § 15-3-1(d) (1972). In *White v. Mississippi State Oil and Gas Board*, 650 F.2d 540 (5th Cir. 1981), the Fifth Circuit,

applying Mississippi law to an argument similar to that espoused by Dr. Raju, opined:

> White also argues that regardless of whether statutory law provided him with a property interest in his employment, his employment contract provided him a right to continued employment. Though he concedes that no express agreement was made as to the duration of his employment, he contends it was mutually understood that he was hired as a permanent employee. While the district court found that the Board hired White as a temporary employee, the permanent-temporary distinction is not controlling on this point because in Mississippi an agreement for "permanent" employment is terminable at the will of either party. *Sartin v. City of Columbus,* 421 F. Supp. 393 (N.D. Miss. 1976), *aff'd without op.,* 573 F.2d 84 (5th Cir. 1978); *Kelly v. Mississippi Valley Gas Co.,* 397 So. 2d 874 (Miss. 1981); *Rape v. Mobile & O.R. Co.,* 136 Miss. 38, 100 So. 585, (1924). While an implied contract can be the source of a protected property interest in employment, it cannot do so in the absence of "mutually explicit understandings that support [the employee's] claim of entitlement." *Perry v. Sindermann,* 408 U.S. at 601, 92 S. Ct. at 2699. The district judge found an absence of any such "mutually explicit understandings" and further held that even if the oral contract had attempted to grant White a right to continued employment, it would have been unenforceable under the state's statute of frauds so that White would have been without a legitimate claim of entitlement to continued employment.

> We conclude that White had no protected property interest in his position sufficient to maintain his claim of denial of due process.

Id. at 543.

In the case at bar, the court concludes, as did the court in *White*, that under Mississippi law plaintiff had no protected property interest in the directorship position sufficient to sustain his claim of denial of due process. The alleged "mutually explicit understandings" in this case simply do not establish a property interest in that position. It is clear under Mississippi law that Dr. Raju's affidavit in support of his claim that it was mutually understood that his appointment as Director was a "permanent" one, is proof of only an "at-will" relationship and, therefore, is insufficient to establish a property interest in that position.

Nor could any alleged representations or assurances by Dr. Hardy or Dr. Nelson that Dr. Raju's appointment as Director of the Transplant Program was a permanent one create a constitutionally protected property interest. *See Staheli v. University of Mississippi*, 854 F.2d 121, 125 (5th Cir. 1988). As the Fifth Circuit has noted:

> [T]he *school itself* must enter into the agreement which gives rise to a protected property interest:
>
> > A property right in a government benefit can arise out of an informal or implicit rule or understanding. But there can be no property right unless the government entity in question has adopted the asserted rule or entered into the asserted understanding.

Id. (quoting *Sabet v. Eastern Virginia Medical Authority*, 775 F.2d 1266, 1269-70 (4th Cir. 1985)). Moreover, even assuming that Dr. Hardy or Dr. Nelson spoke for UMC, "when formal rules and informal understandings conflict, the formal rules control. In other words, when the state provides an explicit and formal policy governing entitlement to a job, informal and customary understandings cannot create a property interest in the face of the formal rules." *Id.*

The court further observes that although Dr. Raju enjoys tenure as a professor at UMC, he has never been granted tenure as Director of the Transplant Program.[18] Dr. Raju does not allege that he was tenured in his position as Director of the Transplant Program. In fact, he contends that the issue of tenure is immaterial to the determination of whether he had a property interest in the directorship position.[19] Instead, according to Dr. Raju, his "legitimate claim of entitlement" to the directorship position is based on custom and practice at UMC that no administrator be removed except for cause, coupled with communications between himself, Dr. Hardy and Dr.

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[18] According to the bylaws and policies of the Board of Trustees, which govern tenure at UMC, all tenure appointments must be in writing and be in the possession of both the institution and teacher before the appointment is consummated.

[19] Plaintiff points out, and the court agrees, that under the tenure policy of the Board of Trustees, no administrator at UMC is tenured in relation to any particular position. The affidavit of Ann Homer Cook, the Board of Trustees' Associate Commisioner [sic] /Executive Secretary, states specifically that "[a]ccording to board policy, an individual is *not* tenured to a title, but rather to a department at a particular institution."

Nelson resulting in an understanding that his position as Director was to be a continuing one.

The court has already concluded that the alleged "understanding" that Dr. Raju was to be the permanent Director of the transplant Program does not grant him a property interest in that position. Further, while the court accepts Dr. Raju's position that "the fact that [he] is not 'tenured' to his position as Director of the Transplant Program does not preclude the creation and existence of an interest arising out of communications, understandings and custom and practice," the court is nevertheless of the opinion that the existence of the tenure policies in place at UMC is relevant to the court's consideration of whether or not Dr. Raju's claim of entitlement to the directorship position is "legitimate." Ordinarily, when an educational institution has a formal tenure system in place, a faculty member must be tenured in a particular position in order to claim a protectible property interest in that position. *Staheli*, 854 F.2d at 124; *Wood v. University of Mississippi*, 539 F.2d 529, 531-32 (5th Cir. 1976). *See also Chiriboga v. Saldana*, 660 F. Supp. 618, 621-22 (D. Puerto Rico 1987) (faculty member did not have property interest in position of director for biomedical and environmental science). Indeed, "the very existence of a tenure system means that those teachers without tenure are *not* assured of continuing employment." *Staheli*, 854 F.2d at 124 (citations omitted). "Of course, if a school has no formal tenure system but has set up in its place explicit or implicit conditions that, if fulfilled, give the teacher job security, the school cannot violate the very agreement

that it created and discharge the teacher without constitutional process." *Id. See also Honore v. Douglas*, 833 F.2d 565, 568 (5th Cir. 1987).

In this case, as in *Staheli* and *Wood*, the University had a formal, written tenure policy to which it adhered when intending to create job security in a faculty member's particular position. This tenure policy makes clear that an administrative position such as Director of the Transplant Program is an untenured position. It is therefore apparent that UMC did not intend to grant faculty members entitlement to administrative positions to which they were appointed. Otherwise, the tenure policy in place at UMC would have provided for the granting of tenure with respect to such positions.

Absent either an enforceable contractual right under state law not to be removed except for cause or a formal grant of tenure in the position at issue, both of which are lacking in this case, any expectation by Dr. Raju that his position as Director of the Transplant Program was to be permanent could hardly be characterized as "legitimate." *See Englestad v. Virginia Municipal Hosp.*, 718 F.2d 262, 265-66 (8th Cir. 1983) (no property interest in oral agreement to serve as director of pathology). The court thus concludes that Dr. Raju's claim of entitlement to the directorship position based upon a mutually explicit understanding is insufficient to create a protectible property interest under the due process clause.

In sum, the court is of the opinion that Dr. Raju has identified no factual basis or legal authority to support his claim that he had a property interest in remaining

Director of the Transplant Program or maintaining a certain level of income from his outside practice.[20] Under these circumstances, the court cannot reasonably conclude that plaintiff possessed a "clearly established" property interest which defendant could have plainly known he was infringing by not providing Dr. Raju with a hearing prior to reorganizing the Transplant Program or removing him from the position of Director. *See Connelly*, 876 F.2d at 1214. Therefore, Dr. Raju has not sustained his burden of establishing that Dr. Rhodes has forfeited his qualified immunity from suit as to Dr. Raju's property interest claim.

2. Has plaintiff been deprived of a constitutionally protected liberty interest?

Although "liberty" protects one's "general right to pursue an occupation unhindered by arbitrary government action," it is apparent to the court that neither Dr. Rhodes' reorganization of the Transplant Program nor his implementation of the Management Services Agreement "entirely

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[20] Although Dr. Raju maintains that Dr. Rhodes' actions in removing him as Director and restricting the use of intensive care unit beds for transplant patients has "caused a drastic decline in the profits that [he] ha[s] been able to generate," he has cited no provision in his contract with UMC entitling him to a certain number of available beds, a certain number or type of transplants, or any specific amount of profits. As discussed previously, his contract provides only that he is to receive a set salary as a tenured professor and 50% of the profits above $120,000 from his private practice. There simply is no guarantee that he is to be afforded the most advantageous environment possible for his generating outside income, much less at the expense of all other administrative and financial concerns.

disabl[ed] [Dr. Raju] from pursuing [a career as transplant surgeon]." *Id.* Dr. Rhodes "did not invoke any regulations to bar [Dr. Raju] from all other public employment. . . . " *Roth*, 408 U.S. at 573-74. Absent a regulatory or licensing bar to plaintiff's performing as a transplant surgeon in either the private or public sector, this court must conclude, as did the Supreme Court in *Roth*, and the Fifth Circuit in *Connelly*, that plaintiff's asserted liberty interest in the right to pursue his chosen vocation has not been implicated in this case. *See Roth*, 408 U.S. at 573-74 (respondent denied relief because "[t]he State, for example, did not invoke any regulations to bar the respondent from all other public employment in state universities. Had it done so, this, again, would be a different case."); *Connelly*, 876 F.2d at 1214 (governmental officer's evaluation of plaintiff's qualifications "did not amount to 'licensing,' " and, therefore, plaintiff's liberty interest in pursuing chosen occupation not violated).

In support of his injury to reputation claim, plaintiff has submitted certain letters written by Dr. Rhodes which, according to plaintiff, "impugn, on foundless charges, Plaintiff's integrity on matters of grave concern in the medical community." Additionally, Dr. Raju's affidavit states that Dr. Rhodes orally communicated with others in regard to these matters. According to Dr. Raju, these alleged communications "were of an exceedingly damaging and disparaging nature and caused Raju very palpable harm in the medical community." Assuming, for purposes of this motion, that these letters and alleged oral statements by Dr. Rhodes stigmatized Dr. Raju, his reputational due process claim nevertheless fails since plaintiff has not established the " 'infringement of some other interest,' " necessary for such stigmatizing communications to be constitutionally actionable. *Connelly*, 876 F.2d at 1215 (quoting *Vandygriff*, 711 F.2d

at 1221). The court finds that neither Dr. Raju's alleged lost income nor his losing the Transplant Program directorship are "sufficient additional deprivation[s] to come within the rule on reputation injury," *id.*, since neither the directorship nor any income above that guaranteed to Dr. Raju under contract are "rights . . . previously recognized by state law." *Roth*, 424 U.S. at 711. *See also Wells v. Hico Indep. School Dist.*, 736 F.2d 243, 256 (5th Cir. 1984) ("[R]eputation alone [is not] a constitutionally protected interest. . . . Rather, the stigma must be imposed by the state in connection with its denial of a right or status previously recognized by state law. . . . ").

D. Is Dr. Rhodes entitled to public official immunity as to plaintiff's state law claims?[21]

Dr. Raju has alleged that, under duress, he entered a practice plan with Dr. Rhodes, and that subsequent to his

---

[21] Dr. Raju argues that this court, under the law of the case doctrine, *see Barrett v. Thomas*, 809 F.2d 1151, 1155 (5th Cir. 1987), should dismiss the defendant's motion with regard to the state common law claim of immunity since, according to plaintiff, the issue of Dr. Rhodes' public official immunity was rejected in the state court system prior to removal to this court. The court, however, finds this argument unpersuasive in that the merits of Dr. Rhodes' immunity defense have never been ruled on. Prior to removal, the Circuit Court of Hinds County held only that plaintiff could conduct limited discovery on the sole issue of defendant's immunity. In fact, the order entered by that court stated specifically that defendant "[was] not precluded from filing a motion for summary judgment at a later date on the qualified immunity issue." The only other action taken on this issue in the state court system was the Mississippi Supreme Court's refusal to grant an interlocutory appeal from the order of the circuit court. Again, however, the actual merits of Dr. Rhodes' entitlement to immunity were not addressed in the court's denial of defendant's petition.

signing of this agreement, Dr. Rhodes breached his duty of good faith and fair dealing under the contract by wholly undermining Dr. Raju's ability to generate revenue.[22] Specifically, Dr. Raju contends that Dr. Rhodes substantially interfered with his ability to generate funds and generally carry on his business by "remov[ing] [him] as director of the transplantation program, plac[ing] new restrictions on the use of ICU beds by transplantation patients, and put a moratorium on all transplant surgeries except kidney transplants."

Under Mississippi law, governmental officials of the state are immune "to a civil action for damages when acting in the performance of official functions discretionary in nature. They lose that immunity only when they substantially exceed their authority and commit wrongs under color of office. They have no immunity where they commit willful wrongs or malicious acts." *Hudson v. Rausa*, 462 So. 2d 689, 696 (Miss. 1984) (citations omitted). In *Grantham v. Department of Corrections*, 522 So. 2d 219 (Miss. 1988), the Mississippi Supreme Court specified the various exceptions that remove a public official from immunity protection:

> [A] governmental official has no immunity to a civil action for damages if his breach of a legal duty causes injury and (1) that duty is ministerial in nature, or (2) that duty involves the use of discretion and the governmental actor greatly or substantially exceeds his authority and in the

---

[22] Plaintiff has also included a state law tortious interference with business relations claim based upon the same actions which he claims give rise to his breach of contract claim.

> course thereof causes harm, or (3) the governmental actor commits an intentional tort. Beyond that, a governmental official has no immunity when sued upon a tort that has nothing to do with his official position or decision making function and has been committed outside the course and scope of his office.

Id. at 225.[23]

In the case *sub judice*, it has been preclusively determined by the Circuit Court of Hinds County that the above described actions of defendant, which give rise to plaintiff's claim that Dr. Rhodes breached his duty of good faith and fair dealing under the contract at issue, were within the scope of his authority, responsibility and prerogatives as Chairman of the Department of Surgery,

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[23] With regard to the administration of state medical institutions, the Mississippi Supreme Court has continually adhered to its position that medical decisions are discretionary in nature. *See, e.g., Hudson*, 462 So. 2d at 695-96. As explained in *Marshall v. Chawla*, 520 So. 2d 1374 (Miss. 1988):

> The [plaintiffs] responded that while the formation of the overall health policy against tuberculosis might have been "discretionary," particular actions in carrying it out, such as treatment of specific individuals, were ministerial. The court rejected this narrow view, saying "we believed the discretion given to the defendants applied not only to their decisions with instituting a program for control, but also the treatment administered in carrying out such policies." The court came very close to saying that "all" medical decisions would be immunized from suit if they occurred in the context of a state institution because "the administration of medical treatment involves the exercise of considerable professional judgment and its discretion. . . . "

Id. at 1375-76 (citing Hudson, 462 So. 2d at 695-96).

were not arbitrary and capricious, and were not personal attacks on Dr. Raju. Based upon Mississippi law, as set forth above, the court therefore finds that Dr. Rhodes is immune from suit as to Dr. Raju's state law breach of contract claim.[24] For the same reasons, Dr. Rhodes is also immune from suit with respect to the claim for tortious interference with business relations.

CONCLUSION

Based on the foregoing, it is ordered that defendant's motion for summary judgment is granted.

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[24] Dr. Raju argues that by presenting evidence of malice on the part of Dr. Rhodes he has overcome Dr. Rhodes' public official immunity. *See McFadden v. State*, 542 So. 2d 871, 883 (Miss. 1989) (quoting *Hudson*, 462 So. 2d at 696) (plaintiff " 'must show some-thing which would suggest malice, wilful wrongs or acts by these defendants substantially outside their official authority' "). Because of the preclusive effect of the state court's findings, Dr. Raju is foreclosed from establishing either that Dr. Rhodes' actions were malicious or that they were "substantially outside [his] official authority." *Id.* Indeed, it cannot be deemed an intentional or wilful wrong to do what one has the legal right or authority to do. As both the Circuit Court of Hinds County and this court have concluded, Dr. Rhodes had the right to reorganize the Transplant Program and to remove Dr. Raju as its Director. He likewise had the right to enter into the Management Services Agreement with Dr. Raju, just as Dr. Raju had the right to refuse to enter into the agreement and unilaterally terminate it as he later did. Under Mississippi law, Dr. Raju has not overcome Dr. Rhodes' public official immunity.

A separate judgment will be entered in accordance with Rule 58 of the Federal Rules of Civil Procedure.

ORDERED this 20th day of November, 1992.

/s/ Tom S. Lee
UNITED STATES
DISTRICT JUDGE

APPENDIX C

EXHIBIT R.E. 4

UNIVERSITY OF MISSISSIPPI
MEDICAL CENTER & SCHOOL OF MEDICINE
JACKSON, MISSISSIPPI

COMMITTEE MEETING OF MARCH 5, 1991
COMMENCING APPROXIMATELY 8:30 A.M.
AT 2500 NORTH STATE STREET
JACKSON, MISSISSIPPI

PRESENTATION BY DR. RHODES

COMMITTEE MEMBERS PRESENT:

Dr. W. Conerly

Dr. Alan Freeland

Dr. Charles Parkel

Don Seagrove

Reported by:

CHERYL SPENCER SMITH
Certified Shorthand Reporter

AB ACTIS REPORTERS
Post Office Box 7275
Jackson, Mississippi 39282-7275
(601) 969-1115

[p. 2] DR. CONERLY: I need to call it to order, officially, but there are a couple of things that I need to get in the record before we get started. Obviously, this morning, as arranged, we are here to meet to hear Dr. Rhodes; but a couple of things I wanted to get in was that, first of all, there are no attorneys present this morning. Dr. Rhodes did not desire to have his attorney; therefore, we do not have our attorney, Mr. Noble, present; and, secondly, though Dr. Rhodes is entitled to a copy of the stenographic record of the meeting with Dr.

Raju on February 5th, he requested that he not receive that until such time as he had completed his session with us, and, of course, we've honored that request.

This morning I think it's appropriate that we conduct this meeting similar to what we did with Dr. Raju, and that is to have Dr. Rhodes take the floor and say whatever he wants to say. This is going to be a very informal sort of thing. It's obviously a hearing before peers. Probably, you will do most of the talking, but we will likely [p. 3] interrupt with questions for clarification and things like this. But, basically, you obviously have the Grievance and have read the Grievance of Dr. Raju against you, and you can speak to it, sir, in any form or fashion you wish, and we will just chime in as we want to or need to, and we will go as long as necessary, to allow you to say what you want to say. So, I'll turn it over to Dr. Rhodes.

DR. RHODES: Okay. I've prepared a packet for each of you. And the basic construct of this: On the inside left cover is an outline. I have some supporting figures on the right side. There will be some exhibits on the back side of that flap. And on the back cover is a line-numbered copy of Dr. Raju's letter of April 9, 1990. And behind that is the original, or a copy of the original, in case you should care to compare the line-numbered copy. And I've put that in there just to make it easy to reference, in case that becomes important.

I appreciate the opportunity to appear before you, and what I would like to do this

* * *

APPENDIX D

EXHIBIT R.E. 5

UNIVERSITY OF MISSISSIPPI
MEDICAL CENTER & SCHOOL OF MEDICINE
JACKSON, MISSISSIPPI

GRIEVANCE COMMITTEE MEETING OF MAY 21, 1991
COMMENCING APPROXIMATELY 8:30 A.M.
AT 2500 NORTH STATE STREET
JACKSON, MISSISSIPPI

RE: GRIEVANCE OF SESHADRI RAJU, M.D.

PRESENTATIONS BY:

DR. JOHN BOWER

DR. KEITH MANSEL

DR. THOMAS N. SKELTON

DR. PAT LEHAN

DR. DONALD E. BUTKUS

COMMITTEE MEMBERS PRESENT:

Dr. Wally Conerly

Dr. Alan Freeland

Dr. Charles Parkel

Don Seagrove

Reported by:

CHERYL SPENCER SMITH
Certified Shorthand Reporter

AB ACTIS REPORTERS
Post Office Box 7275
Jackson, Mississippi 39282-7275
(601) 969-1115

[p. 2] DR. CONERLY: For the record, of course, this is Dr. John Bower. And the Grievance Committee,

John, by virtue of the Faculty Staff Handbook, is constituted with me as Chairman, and then the Vice-Chancellor appoints a senior faculty member from the school from which the grievance comes; and, of course, Alan Freeland is that appointee. And then, a senior faculty member from another school; so, Dr. Charles Parkel from the School of Dentistry was appointed in that position. And, of course, Don Seagrove is an ex officio member, non-voting member, but recording secretary, if you will, of the committee.

I'm sure you know, but let me repeat a little bit, that Dr. Raju filed a Grievance against Dr. Rhodes, alleging certain things that I think can best be summarized in saying that he felt like he had been removed as director of the Mississippi Transplant Program, and that this injured him financially and professionally. He felt that the reorganization of the Transplant Program here at the Medical Center was inappropriate, [p. 3] and so he filed this Grievance.

Since that time, we, of course, initially met with Dr. Raju all one morning, and then met with Dr. Rhodes all another morning; and out of those two sessions a number of individuals were mentioned – you being one of them – that each one or the other felt had information that could contribute to us, as we attempt to make a decision as to whether we feel Dr. Raju has been aggrieved. And, of course, we have to render our decision to the Vice-Chancellor and make any recommendations we so choose.

So, I'll go ahead and get started, if it's all right. All we're going to do is just ask you questions, unless you

have something specifically you want to say or summarize. That's fine with us. We want this to be an informal type of session. But during the course of the hearings it's been brought out that beginning with the problem that we had in the surgical intensive care unit and this business of diversion, apparently Dr. Rhodes made the decision that because of the great time consumption of

* * *

APPENDIX E

EXHIBIT R.E. 6

UNIVERSITY OF MISSISSIPPI
MEDICAL CENTER & SCHOOL OF MEDICINE
JACKSON, MISSISSIPPI

GRIEVANCE COMMITTEE MEETING OF JUNE 4, 1991
COMMENCING APPROXIMATELY 3:30 P.M.
AT 2500 NORTH STATE STREET
JACKSON, MISSISSIPPI

RE: GRIEVANCE OF SESHARDRI RAJU, M.D.

PRESENTATIONS BY:

DR. "B"
DR. "A"
DR. "C"

COMMITTEE MEMBERS PRESENT:

Dr. Wally Conerly

Dr. Alan Freeland

Dr. Charles Parkel

Don Seagrove

Reported by:

VIRGINIA W. BARRON-SMITH
Certified Shorthand Reporter

AB ACTIS REPORTERS
Post Office Box 7275
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[p. 2] PRESENTATION BY DR. "B":

DR. CONERLY: The reason we asked you to come today is because Dr. Raju has filed a formal grievance against Dr. Rhodes as Chairman of the Department of Surgery. And during the course of the many meetings that we have had as the grievance committee, it has been suggested by several parties that we should talk to the chief residents in the Department of Surgery to ask them questions as to certain things pertaining to this grievance. Certainly none of you have been involved in anything one way or the other, it's just asking you to express your opinions and bring out any facts that you wish, and we will simply ask you questions as they come up. We are rather informal. And if there is anything you don't want to answer, you just say so.

Basically, there have been allegations that Dr. Rhodes, in his position as Chairman, has failed to teach and supervise and be involved in the residency training program, has failed to be in the operating room, and has also, quote, demoted, unquote, Dr. Raju

* * *

APPENDIX F

28 USC § 1738

§ 1738. State and Territorial statutes and judicial proceedings; full faith and credit

The Acts of legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

No. 93-1359

Supreme Court, U.S.
FILED
MAR 24 1994
OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1993

SESHADRI RAJU, M.D.

Petitioner,

v.

ROBERT S. RHODES, M.D.

Respondent.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF IN OPPOSITION

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March 24, 1994

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OR CALL COLLECT (402) 342-2831

PARTIES TO THE PROCEEDING BELOW

The Parties To The Proceeding Below are correctly set forth in the Petition.

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No. 93-1359

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Respondent.

Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit

BRIEF IN OPPOSITION

OPINIONS BELOW, JURISDICTION, STATUTORY AND REGULATORY PROVISIONS INVOLVED

The opinions below, jurisdiction and statutory and regulatory provisions involved are correctly set forth in the Petition.

STATEMENT OF THE CASE

The facts necessary for a clear understanding of the question presented are adequately set forth in the Opinions of the district court and Fifth Circuit below. App. 1-52.[1]

ARGUMENT

REASONS FOR NOT GRANTING THE WRIT

The Petition requests the court to grant certiorari to review whether the lower courts ignored *Kremer v. Chemical Constr. Corp.*, 456 U.S. 461 (1982), in deciding that prior quasi-judicial administrative determinations of fact precluded relitigation of Petitioner's state law claims. Whether the elements of collateral estoppel under Mississippi law have been met is not at issue. The federal law governing preclusion in federal courts has long been established and was correctly applied below. This Court should not grant certiorari to review these settled legal principles.

1.

THE MISSISSIPPI STATE COURT JUDGMENT REVIEWING THE UNDERLYING ADMINISTRATIVE PROCEEDINGS IS BINDING ON THE FEDERAL COURT UNDER *KREMER*

Dr. Raju seeks review of the decision of the lower courts that the *administrative* adjudication was preclusive.

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[1] Citations to the Appendix to the Petition will be cited at "App. ___." The Petition will be cited as "Pet. ___."

However, the *judicial* adjudication of the Mississippi circuit court to which Dr. Raju appealed the decision of the Faculty Grievance Committee is itself issue preclusive. "It is well established that judicial affirmance of an administrative determination is entitled to preclusive effect. . . . There is no requirement that judicial review proceed *de novo* if it is to be preclusive." *Kremer,* 456 U.S. at 480 n. 21 (cited at App. 24). The Petition does not argue that this judicial proceeding did not comply with due process. Thus, regardless of the level of administrative process provided, his claims against Dr. Rhodes are precluded by the decision of the state court. This being the case, this court should not grant certiorari to review whether the administrative decision was preclusive.

2.

THE LOWER COURTS SPECIFICALLY APPLIED *KREMER* TO THE PRIOR ADMINISTRATIVE AND JUDICIAL DECISIONS

The sole question presented in the Petition is whether a district court may ignore the due process analysis required by *Kremer* before applying the doctrine of collateral estoppel to bar a plaintiff's state law tort claims. The question presented by Dr. Raju incorrectly presumes that the courts below disregarded this due process analysis. To the contrary, both the district court and the circuit court of appeals expressly applied the *Kremer* due process analysis and held that, as a matter of law, Dr. Raju was afforded a full and fair opportunity to litigate. App. 12, 24.

The district court specifically addressed *Kremer* and found that Dr. Raju was provided an administrative hearing before a faculty grievance committee (complete with the opportunity to present witnesses, and other evidence and to respond to adverse witnesses), an administrative appeal to the Mississippi Board of Trustees of Institutions of Higher Learning, and an appeal to the county circuit court. App. 24-25. The Fifth Circuit likewise addressed *Kremer* and found that Dr. Raju was "accorded incredibly complete administrative and judicial review and at all levels has failed." App. 13.

Since both courts below clearly applied and followed *Kremer*, this is not an appropriate case to determine whether a district court may disregard *Kremer*.

3.

RESPONDENT HAS BEEN FINALLY DETERMINED TO BE IMMUNE TO PETITIONER'S CLAIMS

In addition to holding that Dr. Raju's claims were collaterally estopped, both the district court and the Fifth Circuit held that Dr. Raju failed to present a genuine issue of material fact with regard to Dr. Rhodes' state law qualified immunity defense. App. 14, 51 n. 24. Whether this finding was proper is not a question raised in the Petition. Thus, summary judgment in favor of Dr. Rhodes was proper even if the courts below erroneously applied the doctrine of collateral estoppel. As a result, even if this Court were to grant certiorari and find that the lower court ignored *Kremer*, this Court would be compelled to

affirm the summary judgment based upon the lower courts' finding that he was entitled to qualified immunity.

4.

PETITIONER'S DUE PROCESS CLAIM WAS FULLY ADJUDICATED, NOT APPEALED, AND JUDGMENT IS FINAL

Both courts below held as a matter of law that Dr. Raju was afforded procedural due process. App. 13, 36 n. 16. Because Dr. Raju did not appeal his federal law due process claims, Pet. 7, this finding is unchallenged. As a result, the issue of whether Dr. Raju was provided procedural due process at the administrative level has been finally determined. Since *Kremer* requires only that the prior adjudication "satisfy the minimum procedural requirements of the Fourteenth Amendment's Due Process Clause," *Kremer*, 456 U.S. at 481, whether the lower court adhered to *Kremer* has been finally determined. Nothing is left for Dr. Raju to appeal.

5.

NO CONFLICT EXISTS WITH ANY DECISION OF THIS COURT OR AMONG THE CIRCUITS

No conflicts exists with any decision of this Court or among the circuits. In fact, this case is "on all fours" with *Kremer*: (1) Kremer was allowed an administrative presentation; Raju had a plenary hearing before the Faculty Grievance Committee. (2) Both Kremer and Raju had the right to present witnesses. (3) Both Kremer and Raju were allowed to submit documentary evidence. (4) Like Kremer, Raju was allowed to present oral and written

rebuttal. (5) Like Kremer, Raju was afforded administrative and judicial appellate review procedures. *Kremer*, at 281. The procedures afforded Dr. Raju clearly satisfied the *Kremer* due process requirements. The state law collateral estoppel elements were satisfied. App. 11, 26-27. Consequently, preclusion was mandatory.

The case of *Scroggins v. State of Kansas*, 802 F.2d 1289 (10th Cir. 1986), cited by Dr. Raju, is inapposite. In *Scroggins*, the appellant contended that issues raised in the second proceeding were not actually litigated or necessarily determined – two of the traditional elements of collateral estoppel. *Scroggins*, 802 F.2d at 1291. In this instance, Dr. Raju does not challenge the findings of the district court and Fifth Circuit that all four elements of collateral estoppel under Mississippi law were met. App. 11, 26-27. Since whether the issues raised were actually litigated or necessarily determined is not at issue, *Scroggins* is inapplicable.

CONCLUSION

The Fifth Circuit, the district court and the state circuit court all determined Dr. Raju was provided procedural due process throughout the administrative proceedings. This is all that *Kremer* requires. The final judgment of the state court, to which no question is presented in the Petition, is itself preclusive. Further, both the district court and the Fifth Circuit found Dr. Rhodes immune from liability based upon the undisputed facts. This finding has not been challenged and would

require affirmance irrespective of the question presented in the Petition. Clearly, certiorari is inappropriate.

Respondent respectfully requests the Court to deny the Petition for Certiorari.

Respectfully submitted,

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